

RESOLUTION NO. 2001-298

A RESOLUTION OF THE LODI CITY COUNCIL ESTABLISHING
DEVELOPMENT FEES PURSUANT TO THE SAN JOAQUIN COUNTY
MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN

WHEREAS, the City Council of the City of Lodi has adopted an Ordinance No. 1707 adding Chapter 15.68 to the Lodi Municipal Code establishing, subject to adoption of an implementing Resolution, the authority for collection of a Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) for all new developments pursuant to the SJMSCP; and

WHEREAS, a "Fee Study" dated July 25, 2001 (attached hereto as Exhibit "A" and incorporated herein) was prepared, which analyzed and identified the costs, funding, and cost-benefit of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan; and

WHEREAS, the Fee Study was available for public inspection and review in the office of the City Clerk for more than 10 days prior to the date of this Public Hearing; and

WHEREAS, the City Council of the City of Lodi finds that pursuant to the California Environmental Quality Act ("CEQA"), the imposition of fees as set forth in this Resolution is not exempt from CEQA, and the environmental effects thereof must be analyzed unless such effects have already been analyzed; the City Council of Lodi further finds, declares and determines that the imposition of such fees was discussed in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("SJMSCP"), adopted by the City of Lodi, on February 21, 2001, and the environmental effects thereof were analyzed in the Joint Environmental Impact Statement/Environmental Impact Report [EIS/EIR] (SCH Number 97012055; EIS 99-38) for the SJMSCP, such joint EIS/EIR having been certified by the City of Lodi on February 21, 2001 and that such joint EIS/EIR is adequate for the adoption of the fee set forth in this Resolution; and

WHEREAS, the City Council finds as follows:

- A. The purpose of the SJMSCP Development Fee is to finance the goals and objectives of the SJMSCP that include, but are not limited to preserve land acquisition, preserve enhancement, land management, and administration that compensate for such lands lost as a result of future development in the City of Lodi and in San Joaquin County.
- B. The SJMSCP Development Fee shall be used to mitigate the cumulative impacts of new development on undeveloped lands within the City of Lodi and in San Joaquin County.
- C. After considering the Fee Study and the testimony received at this public hearing, the Lodi City Council approves said Fee Study and incorporates such herein; and further finds that the future development in the City of Lodi will need to compensate cumulative impacts to threatened, endangered, rare and unlisted SJMSCP Covered Species and other wildlife and compensation for some non-

wildlife related impacts to recreation, agriculture, scenic values and other beneficial Open Space uses.

D. The City Council hereby finds that the Fee Study and testimony establish:

1. That there is a reasonable relationship between the need for the establishment and maintenance of preserve lands and the cumulative impacts of future development for which the corresponding fee is charged.
2. That there is a reasonable relationship between the fee's use and the type of development for which the fee is charged.
3. That there is a reasonable relationship between the amount of the fee and the cost of establishment and maintenance of preserve lands on which the fee is imposed.
4. That the cost estimates set forth in the Fee Study are reasonable cost estimates for the establishment and maintenance of preserve lands and fees expected to be generated by future developments will not exceed the total costs of establishing the preserve lands identified in the Fee Study and the SJMSCP.

E. The number of estimated acres of future open space conversions and the number of acres of required preserve lands are shown on Exhibit "B", attached hereto and incorporated herein.

F. The method of allocation of the SJMSCP Development Fee to a particular development bears a fair and reasonable relationship to each development's burden on, and benefit from, the establishment and maintenance of preserve lands to be funded by the fee.

NOW, THEREFORE, BE IT RESOLVED, by the Lodi City Council as follows:

1. Definitions

- a. "CEQA" shall mean the California Environmental Quality Act.
- b. "Compensation Zone Maps" shall mean maps that classify the entire County into categories which track general habitat type to determine compensation ratio requirements and fee zones.
- c. "Fee" shall mean the SJMSCP Development Fee established by this Resolution
- d. "SJCOG, Inc." shall mean the Joint Powers Authority (JPA) as defined in Section 10 of the SJMSCP.
- e. "SJMSCP" shall mean the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.

- f. "SJMSCP" Vegetation Map" shall mean a map that classifies the vegetation types within San Joaquin County.

2. Fee Imposed

- a. The fee shall be collected by the Building Department in accordance to the payment schedule established in Section 5.3.2.3 of the SJMSCP.

3. Amount of Fees

- a. The fee shall be categorized and in the sum of the amounts specified in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP, with the exception that the fee established at the adoption of this ordinance shall be adjusted to 2002 dollars pursuant to the California Construction Cost Index (CCCI). A summary of the Fee is attached hereto as Exhibit "C" and incorporated herein by reference.
- b. The fees described in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP shall be determined based on the preconstruction survey in the fields, which confirm vegetation types on site as indicated by the SJMSCP Vegetation Map.
- c. The Compensation Zone Maps as described in Section 8.2.5 of the SJMSCP and attached hereto as Exhibit "D" and incorporated herein by reference, shall be used to determine if the property is subject to the fee.

4. Exemption from Fees

The fee shall not be imposed on any of the following:

- a. Projects located in a "No Pay Zone" as established in the compensation zone maps.
- b. Project proponents who opt for SJMSCP coverage, but chose an alternative option to paying the fee by completing one or combination of the following:
 - i. Dedicate, as conservation easement or fee title, habitat lands (in-lieu dedications) as specified in Sections 5.3.2.1 and 5.3.2.2 of the SJMSCP; or
 - ii. Purchase approved mitigation bank credits as specified in Section 5.3.2.4 of the SJMSCP; or
 - iii. Propose an alternative mitigation plan, consistent with the goals of the SJMSCP and equivalent or greater in biological value to option i or ii above, subject to approval by SJCOG, Inc.

5. Use of Fee Revenues

The Fee collected pursuant to this resolution shall be utilized for the establishment and maintenance of preserve lands as provided for in the SJMSCP and Fee Study that include, but are not limited to preserve acquisition, preserve enhancement, land management and administration.

6. Accounts

The fees collected pursuant to this Resolution shall be deposited in an established SJMSCP Fund and shall be segregated in a separate and special account from all other City of Lodi accounts. The SJMSCP Fund shall be an interest bearing account as approved by SJCOG, Inc. On a monthly schedule established by SJCOG, Inc., all fees and any interest earnings shall be forwarded to SJCOG, Inc.

7. Periodic Review & Adjustment of Fees

- a) The monitoring and adjustment of fees shall be the responsibility of SJCOG, Inc.
- b) At the time of the City's annual audit report, the City's independent auditor shall specifically report the activity in the SJMSCP fund to SJCOG, Inc.

In the alternative, the City shall allow independent auditors representing SJCOG, Inc. to review the SJMSCP fund financial statements.

- c) The fees established pursuant to this resolution shall be adjusted and implemented in January of each year based upon the preceding fiscal years' averaged California Construction Cost Index (CCCI) figures and/or in conformance with Section 7.5.2.2 of the SJMSCP, with exception that the fees established at the adoption of this ordinance shall be effective until December 2002.
- d) SJCOG, Inc., shall notify the City of Lodi in writing of proposed annual adjustments to the fees by October 1st of each year.
- e) The City of Lodi shall be responsible in the implementation of the adjusted fees in January of each year.

8. Effective Date

The fees provided in this resolution shall be effective on February 18, 2002, which is at least sixty (60) days after adoption of this resolution.

Dated: December 19, 2001

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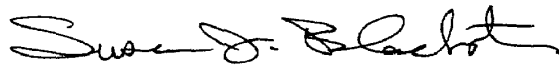
I hereby certify that Resolution No. 2001-298 was passed and adopted by the City Council of the City of Lodi in a regular meeting held December 19, 2001, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi,
and Mayor Pennino

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk

2001-298

EXHIBIT "A"

Fee Study

**San Joaquin County
Multi-Species Habitat Conservation
and Open Space Plan (SJMSCP)**

**San Joaquin Council of Governments
(209) 468-3913
Contact: Gerald Park
7/25/01**

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NOTE: The following study contains extensive excerpts from: *Habitat/Open Space Conservation Fee Study*, prepared by: City of Stockton Community Development Department with the assistance of Steven B. Meyers, Special Counsel and Kathleen Faubion of Meyers, Nave, Riback, Silver & Wilson-San Leandro, CA, November, 1994. The San Joaquin Counsel of Governments thanks the City of Stockton for allowing it to liberally borrow from that study and for its assistance in preparing this report.

A. Introduction/Background

1. General Plan Policies and Programs & General Plan EIR Mitigation Measures

The California State Legislature has unequivocally established the importance and value of open space lands. The preservation of open space land is necessary "for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation, and for the use of natural resources."¹ "Cities...[must] make definite plans for the preservation of valuable open space land and take positive action to carry out such plans...."² Open space preservation is so important, the Legislature requires it to be specifically addressed in local general plans, which are a community's most basic land use planning and development policy guide.³

San Joaquin County and the Cities of Escalon, Lathrop, Lodi, Manteca, Ripon Stockton, and Tracy adopted general plans and accompanying environmental documentation for those general plans as described in Exhibit 1. Agricultural and habitat open space⁴ are a component of each of these plans which seek to provide long term protection for agricultural lands and for natural resources, such as fish, plants, wildlife and the habitats upon which these resources depend. In addition to policy statements, these general plans also propose implementation programs and identify the need for mitigation measures for providing long-term protection of natural resources and open spaces throughout the county. Exhibit 1 includes the applicable sections of the General Plans and General Plan Environmental Impact Reports of each of the county's eight governmental jurisdictions which pertain to the management of open spaces

¹ Government Code Section 65561(a). All subsequent statutory references are to the Government Code unless otherwise noted.

² 65561(c)

³ 65302(d), (e)

⁴ Section 665560 of the Government Code defines four categories of open space land. The first category is open space for the preservation of natural resources, including areas required for the preservation of plant and animal life, habitat for fish and wildlife species, rivers and streams and their banks. The second category is open space for the managed production of resources, including rangeland, agricultural lands and estuaries, marshes, rivers and streams important for the management of commercial fisheries. The third category is open space for outdoor recreation. The fourth category is open space for public health and safety.

The program described in this report focuses primarily on the first category, but these open spaces are additionally recognized for their multiple benefits as reflected in all four open space categories.

and conservation of natural resources countywide. A few of these goals, policies, implementation programs and mitigation measures are highlighted in the following:

"The County shall support habitat conservation and restoration plans for special-status taxa and shall work with the California Department of Fish and Game and other agencies or organizations in developing such plans." (San Joaquin County General Plan, 2010, Vol. 1; 7/29/92; Policy 12 - Resource Protection and Management)

"Conserve, to the greatest feasible extent, the City's existing natural resources, with particular emphasis on air and water quality, open space, farmland, wildlife and habitat preservation." (Escalon General Plan, Policy 3.210)

"The City shall on its own, or in participation with other local governments, prepare and implement a Habitat Conservation Plan (HCP) for the Swainson's hawk. The acquisition of lands required as replacement habitat for nesting and foraging is to be funded by fees imposed upon developers whose land development activities would threaten, endanger or eliminate existing habitat within the Lathrop planning area. The HCP shall be based upon a current habitat field survey taken during the Swainson's hawk nesting season to determine whether Core Conservation Areas or only foraging habitat exists." (Lathrop General Plan/EIR 12/17/91; Vegetation Fish and Wildlife Policy #3)

"The City shall support federal and state laws and policies preserving rare, threatened and endangered species by ensuring that development does not adversely affect such species or by fully mitigating adverse effects consistent with the recommendations of the U.S. Fish and Wildlife Service and the California Department of Fish and Game." (Lodi General Plan 12/89; Conservation and Open Space Element Policy #6)

Participate in Habitat Management Plan or equivalent effort to preserve habitat. (Manteca General Plan/EIR 5/88, Mitigation Measure 10.6-2)

The City will promote and encourage the preservation of open space areas along the Stanislaus River and maximize its potential for public enjoyment. (Ripon General Plan 9/88; Conservation and Open Space Element Policy #4)

All new development within the planning area shall contribute fees toward a central fund for wildlife habitat preservation and replacement. The fee could be used to defray the costs of the identification and mapping process described in "a", above, and the evaluation and monitoring of habitat replacement plans described in "c", below. It could also be used to acquire and maintain land outside of the planned growth areas which would serve, in part, to replace the agricultural land/wildlife habitat that is lost as a result of urban development. (City of Stockton General Plan 5/96; Biological Resources Mitigation Measure 1b)

"Prepare and implement a plan, in consultation with state and federal agencies, on the management and enhancement of wildlife habitat in environmentally sensitive open space areas throughout the Tracy Planning Area. This plan may take the form of a Habitat Conservation Plan (HCP) as authorized by law under the FESA and CESA". (City of Tracy General Plan 7/93; Action OS 1.3.1).

2. Conditions of Project Approval

In addition to general plan goals, policies, implementation measures and general plan mitigation measures, several local jurisdictions (e.g., Stockton, Tracy and San Joaquin County) already have approved projects (e.g., subdivision and parcel maps, development agreements, pre-approvals, use permits and other projects) which are conditioned to provide mitigation for impacts to various sensitive species. Project proponents have been given the option of participating in the San Joaquin Multi-Species Habitat Conservation Plan (SJMSCP), or its equivalent to fulfill these project conditions. Adoption of a fee ordinance pursuant to the SJMSCP will allow project proponents opting for SJMSCP coverage to fulfill conditions of project approval.

3. San Joaquin County Multi-Species Habitat Conservation and Open Space Plan

The catalyst for the SJMSCP originated with conflicts between proposed development and habitat lands for the Swainson's hawk, listed as threatened under the California Endangered Species Act (CESA), and the San Joaquin kit fox, listed as endangered pursuant to the Federal Endangered Species Act (ESA).

On January 2, 1990, the City of Stockton adopted a general plan (Michael Paoli and Associates 1989) that required the preparation of conservation plans to provide a mechanism to preserve and mitigate impacts on sensitive species within the planning area based on a concept of "no net loss" of habitat. Because no mechanism was in place to effectively mitigate impacts to Swainson's hawks, and because of the rapid pace of development in Stockton, the city recognized a need to implement a mitigation mechanism that could be applied easily to all development projects within the planning area. The development of a draft habitat conservation plan for the hawk resulted in December 1990.

On the heels of this endeavor, came the County's effort to address clashes between new developments proposed in the southwestern portion of the County and habitat for the San Joaquin kit fox. This resulted in a June 1993, draft habitat conservation plan for the San Joaquin kit fox.

In the midst of these efforts, business and government leaders joined together to address the critical issues facing San Joaquin County in VISION 2000.

Through each of these efforts, it became obvious that the fragmented approach currently being used to mitigate impacts to threatened and endangered species and their habitats on a case-by-case basis was not only biologically unreliable and did not meet long-term species goals, but this approach was not an effective approach to planning new development. In late 1993, the San Joaquin Council of Governments was approached to oversee the preparation of a regional plan to address the management of biological resources in San Joaquin County.

In 1994, the Council of Governments established a steering committee to guide the planning process. The steering committee was divided into a policy committee, the Habitat Policy Advisory Committee (HPAC), and a technical committee, the Habitat Staff Working Group (HSWG). These committees were

composed of representatives from San Joaquin County; Caltrans; the U.S. Army Corps of Engineers; the California Department of Fish and Game; the U.S. Fish and Wildlife Service; agriculture; conservation; the Building Industry Association of the Delta; the Business Council; the Delta Protection Commission; the Delta Habitat Conservancy; the Central Valley Rock, Sand and Gravel Association; and representatives from the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton and Tracy. Other interested persons regularly attending the twice-monthly public steering committee meetings included representatives from the San Joaquin Farm Bureau, Senator Patrick Johnston's office, Assembly member Mike Machado's office, Congressman Richard Pombo's office, the Audubon Society, the San Joaquin County Mosquito and Vector Control District, and others.

During the early phases of the planning process, it was recognized that management of Open Space lands for species also could provide recreational benefits, preserve scenic values, and assist in preserving agricultural lands and Open Space lands for other beneficial uses. As stated in the October 1994, Memorandum of Understanding adopted for the SJMSCP, a primary objective of the SJMSCP planning process is to "Provide a basis for a County-wide multiple-use Open Space plan which contributes to the quality of life of the residents of San Joaquin County."

Pursuant to this guiding purpose and over the seven-year planning process, the following documents were produced:

1. *Biological Analysis: San Joaquin County Multi-Species Habitat Conservation and Open Space Plan*, by Toyon Environmental Consultants, Inc., June, 1996.
2. *Economic Analysis for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan*, by Hausrath Economics Group, February, 1997;
3. *Joint Draft Environmental Impact Report/Environmental Impact Statement for the SJMSCP*; September 23, 1999;
4. *Joint Final Environmental Impact Report/Environmental Impact Statement for the SJMSCP*, November 15, 2000;
5. *San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP)*; November 14, 2000; and
6. *Implementation Agreement Regarding the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan for Certain Lands in San Joaquin County, California*, December 7, 2000.

Each of the preceding documents is hereby incorporated by reference. Copies of all documents may be obtained from the San Joaquin Council of Governments, 6 S. El Dorado St., Suite 400, Stockton, CA 95202, during regular business hours, or by contacting Gerald Park at (209) 468-3913.

On October 10, 1994, the San Joaquin Council of Governments, Caltrans, the U.S. Fish and Wildlife Service, the California Department of Fish and Game and the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy signed a memorandum of understanding which established the objectives of the Plan.

The objectives of the SJMSCP, as established in the Plan's MOU and resulting from the process described above, are to:

- A. Establish a program for managing biological resources which addresses the economic, agricultural, conservation and public interests unique to San Joaquin County while complying with local, state and federal conservation laws;
- B. Provide consistent and predictable treatment of development proposals throughout the County to reduce costs and uncertainty and ensure a healthy economic environment for citizens and industries;
- C. Lessen or avoid both site specific and cumulative impacts to species by replacing project-by-project reviews with long-term strategies for conserving, protecting and maintaining viable populations of multiple native special status species;
- D. Replace confrontations between local, state and federal individuals and agencies with consensus-building, compromise and partnerships to encourage a streamlined permitting process, eliminate redundant efforts, reduce unnecessary expenditures of funds and manpower, promote the consolidation of scattered resources and replace litigation with effective mitigation.
- E. Provide a basis for a County-wide multiple-use Open Space plan which contributes to the quality of life of the residents of San Joaquin County; and
- F. Identify a financing and acquisition strategy which spreads implementation costs equitably among all beneficiaries and which is affordable to the region.

Between January and March, 2001, San Joaquin County; the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy and the San Joaquin Area Flood Control Agency (SJAFCA) unanimously adopted the SJMSCP. The U.S. Fish and Wildlife Service issued the applicable permits for the SJMSCP on May 31, 2001. The California Department of Fish and Game issued applicable permits on July 13, 2001.

B. Statutory Requirements for Establishing Fee

The authority for cities, the County, and other local government agencies to impose conservation fees derives from their general police powers, from provisions of California law reciting the importance of protecting agricultural and habitat open space lands, from the jurisdictions' general plans (See Exhibit 1) calling for the preservation of agricultural and habitat resources, and from requirements of the California Environmental Quality Act (CEQA) that significant environmental impacts be mitigated, if feasible.

Government Code Section 66000, et seq., contains both substantive and procedural requirements for establishing fees such as this SJMSCP fee.⁵ The substantive requirements include Section 66001(a) which requires a local jurisdiction to:

- A. Identify the proper use of the fee;
-
5. Sections 66000-66007 may not apply to the SJMSCP fee given that these sections only apply to fees charged "for the purposes of defraying all or a portion of the cost of public facilities related to the development projects." The definition of "public facilities" (including "public improvements, public services and community amenities") appears directed towards facilities to benefit the residents of the development, whereas the SJMSCP fee is designed to compensate the environmental impacts of the development. Thus, open space preserves purchased and/or maintained with the SJMSCP fee

- B. Identify the use to which the fee is to be put;
- C. Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;
- D. Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

Section 66001, subdivision b, further requires the local government to determine how there is a reasonable relationship between the amount of the fee and the cost of the improvements attributable to the development on which the fee is imposed.

Each of these items is contained in this fee study report, as reflected in the following summary:

- a. The purpose of the conservation fee is to:
 - i. Provide a means to compensate for the cumulative loss of habitat and movement corridors for special status and common species due to new development occurring within the SJMSCP's Permit Boundaries (See SJMSCP Planned Land Use Map) resulting from the implementation of SJMSCP Covered Activities (SJMSCP Section 8.2.1), and
 - ii. Provide a means to compensate for the direct impacts to sensitive species and their habitats resulting from the implementation of SJMSCP Covered Activities (SJMSCP Section 8.2.1) within the SJMSCP's Permit Boundaries (See SJMSCP Planned Land Use Map);
- b. The conservation fee will be used to administer the SJMSCP and to acquire, enhance, restore, maintain, and monitor open space Preserve lands in perpetuity primarily for the benefit of fish, plants and wildlife and for the ancillary multiple open space benefits afforded by this habitat protection (e.g., conservation of agricultural lands, educational uses, preservation of scenic resources, recreational and other opportunities);
- c. For the purposes of this program, the "development project" is defined as the issuance of either a building permit or grading permit for an SJMSCP Covered Activity (SJMSCP Section 8.2.1) in accordance with SJMSCP Section 5.3.2.3 (See Section C for full text). At the point that a grading or building permit is approved for new development, the developer may proceed with construction, thus converting the parcel from agricultural use or habitat or other open space function to urban use. This Conversion creates the need for, and the consequent use of conservation fees for, replacement of these resource lands.
- d. The amount of the conservation fee is based on the size of the parcel subject to the building or grading permit and to the biological value of the land undergoing Conversion and is thus directly proportional to the cost of replacing the lost resource lands.

Procedural requirements for establishing developer fees include a noticed public hearing, with notice provided by mail and publication (Sections 66016, 66018). Information on the cost of and resources available for habitat mitigation must also be made available to the public.

Once the fees are established, they must be kept in a separate account [Section 66006(a)]. The account balance must be reported and reviewed yearly at a public meeting [Section 66006(b)]. Where fees remain unspent or uncommitted five years after deposit, the local jurisdiction must identify the purpose of the fee and show a reasonable relationship between the fee and its purpose [66001(d)].

C. Areas Subject to Conservation Fees

Pursuant to Section 8.2.5 of the SJMSCP (See Exhibit 3 for Text), the *SJMSCP COMPENSATION ZONE MAPS* shall be used to determine where, or if, payment of conservation fees are necessary based upon the habitat value of the vegetation/habitat types found on the parcel as of 1/1/01 and their associated impacts to fish, plants and wildlife.

The *SJMSCP Compensation Zone Maps* are maps which classify the entire County into one of the following categories (which track general habitat type to determine compensation ratio requirements) and Fee Zones (used to determine fees on a per/acre basis), as described below:

“No-Pay Zones” include parcels where Conversions of Open Space already have occurred and contain little, if any, habitat value, even on a cumulative level. These areas, shown in Exhibit 2, are not subject to the conservation fee. In essence, these lands constitute a “No Pay” area and include Urban Lands. Urban Lands are those lands which are already Converted from Open Space use by urban uses as of January 1, 2001. These include the following vegetation categories mapped on the *SJMSCP Compensation Zone Maps* (which are the equivalent of the *SJMSCP Vegetation Maps* which have been field checked and corrected by agency staff): U (Urban/Industrial/Built) and U2 (Scraped/Paved). Please note that some vacant infill parcels were mapped as U or U2 on the *SJMSCP Vegetation Maps*, but are considered as Multi-Purpose Open Space Lands and are subject to the SJMSCP as indicated on the *SJMSCP Compensation Zone Maps* because they are undeveloped, do not yet have final approval for development plans, or have approved development plans which include conditions permitting coverage pursuant to the SJMSCP.

“No Pay Zones” also include new Conversions of Open Spaces which are exempt from the SJMSCP because:

The subject parcel received a project approval prior to the Effective Date of the SJMSCP. Approved, for the purposes of this section means completion of the environmental review process (CEQA review) and approval of an entitlement through a public hearing process or issuance of an entitlement by a local planning agency if a public hearing is not required. Conditions of prior approval or statements of no impact shall be attached to these projects in accordance with the conditions of approval.

There is no fee for SJMSCP Permitted Activities located within the No Pay Zone on the *SJMSCP Compensation Zone Maps* unless otherwise specified in pre-existing conditions of project approval.

“Pay Zones” include those parcels, which are not otherwise exempt, that contain habitat types that have habitat values ranging from low value (Multi-Purpose Open Spaces) to high values (Agricultural Habitat Lands, Natural Lands). These parcels specifically include:

- A. Parcels containing habitat types classified as Multi-Purpose Open Spaces. Multi-Purpose Open Space Lands are scattered throughout the County, but are primarily barren lands or orchards and vineyards. Orchards and vineyards share the valley floor with Agricultural Habitat Lands. Vineyards extend into the vernal pool grasslands of the extreme northern county and eastern

foothills. Multi-Purpose Open Space Lands mapped on the SJMSCP GIS Database are: Barren (B, B2, B3, B4, B5), Cropland (C), Orchards and vineyards (C2), ruderal (C5B may also be classified as Agricultural Habitat Lands where habitat value is high), Cultivated parks and golf courses (U3) and some water features (e.g. cement lined aqueducts and ditches without riparian vegetation). Please note that some vacant infill parcels were mapped as U (Urban/Industrial/Built) or U2 (Scraped, Paved) on the SJMSCP Vegetation Maps, but are considered as Multi-Purpose Open Space Lands and are subject to the SJMSCP as indicated on the SJMSCP Compensation Zone Maps because they are undeveloped, do not yet have final approval for development plans, or have approved development plans which include conditions permitting coverage pursuant to the SJMSCP.

Multi-purpose open space lands provide habitat for common wildlife species, contain food sources for special status species and provide movement corridors for both common and special status species.

- B. Parcels containing habitat types classified as Agricultural Habitat Lands. Lands which are in non-permanent-crop agricultural uses as of 1/1/01 as indicated on the SJMSCP *SJMSCP Vegetation Maps*. Agricultural Habitat Lands include perennial and annual croplands and some ruderal habitats. Agricultural Habitat Lands include the following mapped vegetation types: C3 (Row and field crops, ditched), C4 (Row and field crops, unditched), and C5 (Ruderal except for some ruderal lands classified as Multi-Purpose Open Space due to low habitat value). Agricultural Habitat Lands are found primarily on the County's valley floor and in the Delta. Agricultural rangelands are generally classified as Natural Lands since they are primarily grasslands or vernal pool grasslands. Orchards and vineyards are classified as Multi-Purpose Open Space Lands.

- C. Parcels containing habitat types classified as Natural Lands. Natural Lands include those lands which contain natural vegetation as of 1/1/01 as indicated on the SJMSCP *SJMSCP Vegetation Maps* and which are not irrigated or cultivated agricultural land. Natural Lands include the following SJMSCP vegetation types: BCN-Blue Oak-Conifer Savanna (< 10% canopy closure), BCN2-Blue Oak-Conifer Woodland (10-33% canopy closure), BCN3-Blue Oak-Conifer Forest (34-75% canopy closure), BCN4-Blue Oak-Conifer Forest (>75% canopy closure), BL-Blue Oak Savanna (< 10% canopy closure), BL2-Blue Oak Woodland (10-33% canopy closure), BL3-Blue Oak Forest (34-75% canopy closure), BL4-Blue Oak Forest (>75% canopy closure), D-Drainage Ditches, G-Valley Grasslands, G2-Foothill Grasslands, G3-Vernal Pool Grasslands, I-Channel Islands, I2-Tule Island and Mud Flat, O/G-Mixed Oak Savanna (<10% canopy closure), O2-Mixed Oak Woodland (10-33% canopy closure), O3-Mixed Oak Forest (34-75% canopy closure), O4-Mixed Oak Forest (>75% canopy closure), R-Great Valley Riparian Forest, R2-Great Valley Oak Riparian Forest, R3-Great Valley Cottonwood Riparian Forest, R4-Arroyo Willow Thicket, R5-Great Valley Mixed Riparian Forest, S-Great Valley Riparian Scrub, S2-Elderberry Savanna, S3-Diablan Sage Scrub, SG-Sage/grassland, V-Valley Oak Savanna (<10% canopy closure), V2-Valley Oak Woodland (10-33% canopy closure), V3-Valley Oak Forest (34-75% canopy closure), V4-Valley Oak Forest (>75% canopy closure), W-River/Deep Water Channel (> 200 feet wide), W2-Tributary Stream (100-200 feet wide), W3-Creek (20-100 feet wide), W4-Dead-End Slough; W5-Freshwater Lake, Pond or Vernal Pool; W6-Sewer Treatment Ponds, W7-Freshwater Emergent Wetland, W8-Vernal or Seasonal Wetland, and W9 - Canal (canals with riparian vegetation only are considered Natural Lands; cement-lined canals, or canals lacking riparian vegetation, are classified as Multi-Purpose Open Space Lands). Natural Lands are considered to have the highest Open Space value of the three categories since Natural Lands provide the most valuable plant, fish and wildlife habitat, provide opportunities for recreational trails along linear waterways, and provide outstanding scenic value, generally in the context of large expanses of Open Space.

- D. Parcels containing Natural Lands classified as Vernal Pool Grasslands (G3) as indicated on the SJMSCP *SJMSCP Vegetation Maps* and as verified by a site inspection conducted by the JPA.

Other Zones

In cases where a separate written agreement between the Project Proponent and the Permitting Agencies has been reached to address plants, fish and wildlife and habitat issues for a proposed project, the provisions of the agreement shall determine the appropriate fees and compensation. Wherever possible, these agreements shall be reflected on the *SJMSCP Compensation Zone Maps*. Agreements which reflect partial mitigation only (e.g., for cumulative impacts, but not for site specific impacts) are not included in this category.

The *SJMSCP Compensation Zone Maps* are hereby incorporated by reference.

D. Amount of Conservation Fee

1. Background

The following analyzes the costs of the SJMSCP, describes the process used to determine a fair distribution of costs for the SJMSCP, describes the mechanisms by which the SJMSCP shall be funded, describes the overall SJMSCP funding plan, describes SJMSCP funding assurances, and includes an analysis of the costs versus the benefits of implementing the SJMSCP. This information is summarized from the *Economic Analysis for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP Economic Analysis)*, prepared April 7, 1997, by Hausrath Economics Group, hereby incorporated by reference. Copies of this study may be obtained during regular business hours at the San Joaquin Council of Governments, 6 S. El Dorado St., Suite 400, Stockton, CA 95202, or by contacting Gerald Park at (209) 468-3913.

Plan Costs

The purpose of the SJMSCP cost analysis is to generate estimates of the costs to preserve Open Space lands in San Joaquin County pursuant to the SJMSCP. The total cost of the SJMSCP is the sum of four components:

- A. Acquisition of Preserve lands (and associated transaction costs),
- B. Monitoring and restoration and/or enhancement of Preserve lands,
- C. Endowment for long-term management of Preserve lands, and
- D. Initial and on-going administration of the Plan.

Costs of acquisition, monitoring, enhancement and/or restoration, and endowment components vary depending upon the type of Preserve lands being acquired and enhanced and, in many cases, the location of the Preserve lands being acquired.

Preserve Land Acquisition Costs

Under the SJMSCP, the JPA would acquire Preserve lands through acquisition of fee title interest (all of the rights of ownership and control) or would acquire conservation easements (a limited set of rights to the property, short of full ownership and control). For any given parcel of land, the cost of a conservation easement is less than the cost of fee title interest, because the seller of the conservation easement retains title to the property and is free to use the land and continue to generate economic return from the land, subject to the provisions of the easement agreement. Because of this cost differential and because many existing agricultural practices are compatible with the needs of SJMSCP Covered Species, most of the Preserve acquisition is expected to be in the form of conservation easement agreements. While the exact percentage of land to be acquired through the purchase of easements remains flexible in the SJMSCP, it is estimated that up to 90% of Preserve lands will be acquired by means of conservation easements, and up to 10% of the Preserve lands will be acquired via fee title. All transactions require a willing seller.

Another component of the acquisition strategy is that the land acquired for Preserves mirror the habitat types within the Open Spaces Converted. The JPA will categorize land Conversions by the *SJMSCP Index Zone* in which it occurs, and will use the *SJMSCP Index Zones* as the primary means of identifying potential lands for acquisition. Therefore, as the SJMSCP is implemented, the distribution of Preserve lands by *SJMSCP Index Zone* will be roughly the same as the distribution of land Conversion by *SJMSCP*

Index Zone (for limited exceptions to this, see Section 5.1.2.6). Because of differences in land characteristics and cropping patterns captured by the *SJMSCP Index Zone* distinctions, the *SJMSCP Index Zones* are important categories for the land cost analysis. As described below, land acquisition costs reflect the land cost differences by *SJMSCP Index Zone*.

Land Value Assumptions

The land cost estimates developed for the SJMSCP cost analysis are based on an analysis of real estate transactions in San Joaquin County during 1994, 1995, and early 1996. A database of transactions from DataQuick was used in this analysis. The primary source of the DataQuick information is the San Joaquin County Assessor's offices. The original database included over 750 transactions of parcels with the following use designations: irrigated vegetable crops, irrigated field crops, orchards, vineyards, irrigated pasture, dry grazing, dairy farms, and chicken ranches.

The goal of the analysis was to develop average estimates of the cost to acquire fee title interest in land that satisfied the SJMSCP Preserve criteria (see Section 5.4.4). To develop land value estimates representative of the types of parcels that would be acquired as Preserves under the SJMSCP required sorting out transactions that did not satisfy those location or land use parameters. The methodology to develop land cost estimates had to narrow the set of transactions to include only those most similar to the types of "willing seller" transactions that would be the target of the JPA's acquisition efforts. A necessary element of this process also was to eliminate transactions representing significant speculative value (i.e., value derived from expectations that land would generate higher economic return in the future as a consequence of Conversions to orchards or vineyards or, more permanently, to a residential subdivision).

Initially, the following transactions were removed from the database: partial interest transactions (i.e., less than fee title interest), transactions outside of the County boundaries (since the County has indicated a preference that lands acquired pursuant to the SJMSCP be located within the County and that policy has been adopted as part of the SJMSCP), and parcels with inappropriate uses such as poultry farming and dairies. Transactions involving orchard and vineyard lands also were eliminated. Because of the higher economic value of the crop, orchard and vineyard lands sell for substantially higher per acre prices than do other types of agricultural lands in San Joaquin County. While orchards and vineyards (Multi-Purpose Open Spaces) have value as Open Space resources, their habitat value for SJMSCP Covered Species is relatively low (for the reasons discussed in Section 4.1). For these reasons, orchard and vineyard lands are not a priority for Preserve acquisition and transactions involving these lands were eliminated from the database.

Finally, so as not to skew the results, transactions that indicated extreme average values, generally greater than \$15,000 per acre, were removed from the database. At the same time, multi-parcel transactions were combined so that average values per acre could be estimated based upon the entire land transaction and not the values attached to individual parcels.

From the focused database, two sets of transaction data were created. One set consisted of transactions involving dry grazing and dry farming lands--equivalent to the types of grassland habitats that would be acquired in the *Southwest Zone* and the *Vernal Pool Zone*. The other set consisted of transactions involving irrigated field and vegetable crops and irrigated pasture--equivalent to the types agricultural habitat lands and related riparian and Water's Edge Preserve Types.

Two final revisions were then made to the remaining parcels. Parcels of less than 20 acres were removed from the database since these potentially reflect value as home sites and would not be representative of typical Preserve lands. Second, only those transactions involving parcels outside of urban development boundaries indicated on the *SJMSCP Planned Land Use Map* were retained in the final analysis since

these lands both reflect less speculative land value (and therefore lower costs) and provide larger tracts of interconnected habitat lands which will not be fragmented by development and, therefore, ultimately may provide higher habitat value for SJMSCP Covered Species.

The remaining transactions were sorted by *SJMSCP Index Zone* and average land values per acre for transactions within each *SJMSCP Index Zone* were computed. Table 7-1 presents the results of the land value analysis, showing estimated Preserve costs, per acre, for fee title acquisition and for purchase of easements. The following points provide some context for those estimates from the transaction database.

- A. Because of cropping patterns and other factors, land values in the *Primary Zone of the Delta* are substantially lower than they are for row and field crop land in other parts of the County. The cost to acquire fee title interest in an acre of land in the *Primary Zone of the Delta* that would be suitable habitat is estimated at \$1,400. The final set of transactions used to develop that estimate excluded transactions of less than 100 acres and parcels where an existing residence appeared to add significant value. The per-acre values for the resultant transactions ranged from just over \$400 per acre to \$2,300 per acre. The average parcel size was 380 acres.
- B. An average value of \$3,700 per acre is used to estimate the cost to acquire fee title interest in agricultural habitat lands elsewhere in the County. That value was derived from transactions of irrigated row and field croplands in the *Central Zone*. The final set of transactions excluded those involving parcels of less than 100 acres and parcels where an existing residence appeared to add significant value. A large transaction just on the edge of the urban development boundary of Stockton also was excluded to reduce the potential for including a component of speculative value in the results. The average land values for the resultant final set of transactions ranged from just over \$1,000 per acre to about \$7,900 per acre. Most of the transactions ranged from \$3,200 per acre to \$4,500 per acre. The average parcel size was about 170 acres.
- C. The average value for grasslands in the *Southwest Index Zone* is estimated to be approximately \$700 per acre. In the final set of transactions used to develop this average, the range of values was \$350 per acre to \$2,050 per acre. The average transaction size was about 1,300 acres.
- D. The cost to acquire in fee title vernal pool grasslands, generally along the northern and eastern ends of the County (within the *Vernal Pool Zone*), is estimated to be about \$1,100 per acre. In the final set of transactions used to develop that average value, parcels less than 100 acres were excluded. The values ranged from \$300 per acre to \$3,270 per acre, the high end value reflecting a transaction involving some irrigated field crops in addition to the grasslands. On average, there were approximately 410 acres in each transaction.
- E. The cost to acquire *Vernal Pool Zone* Large Area and Small Area Preserves is estimated to be approximately \$2,300 per acre. Because this land is the edge of streams, creeks, sloughs, marshes, and ditches that run through row and field cropland and grasslands, it was assumed not to have land value independent of the adjacent croplands and grasslands. Therefore, the estimate of average land value was derived from the transactions for both irrigated row and field crops and grasslands.
- F. Similarly, the land value estimates for riparian Preserves within row and field croplands in both the *Primary Zone of the Delta* and the rest of the County are the same. The riparian habitat is assumed to be primarily the riparian edges of agricultural lands.

Moreover, there are not many instances of transactions involving riparian edges only.

Easement Value Assumptions

Once fee title costs for potential Preserve lands were determined, these costs had to be Converted into easement costs.

Existing agricultural practices for row and field crops and grazing are generally compatible with the SJMSCP enhancement and management goals for some SJMSCP Covered Species (see SJMSCP Sections 5.4.6 and 5.4.7). Several of the SJMSCP Covered Species rely on habitat provided by rangelands, irrigated fields, and low-lying crops (e.g., most species associated with the *Central Zone* row and field crop habitats, the *Southwestern Zone* grasslands, and the *Vernal Pool Zone* vernal pool grasslands -- see Section 5.4.4). Therefore, maintaining agricultural production values on most Preserve lands is a key goal of the SJMSCP. This is most efficiently accomplished by acquisition of easements ensuring continued agricultural use in support of habitat and Open Space needs. The acquisition of such a conservation easement represents the acquisition of any rights to develop or use land in ways that would jeopardize its value as habitat or Open Space. All other rights to productive use of the land would be retained by the owner of fee title interest (should those productive uses include activities which are inconsistent with the conservation strategy of the SJMSCP, lands would not be acquired for Preserves).

Under the SJMSCP, the value (or cost to the JPA) of the conservation easement would typically represent the value of the rights foregone by the owner of the fee title interest. Those will vary depending on the location and characteristics of the parcel, the expectations of the property owner, the market conditions of various crops, and the existing agricultural practices on the property. Typically, the conservation easement would require the land to remain in agricultural use (or in its otherwise natural state) and would prohibit Conversion to orchard or vineyards (crops not considered high value habitat lands as discussed in Section 4.1).

Most of the Preserve acquisition under the SJMSCP is expected to be acquisition of conservation easements. Therefore, it was important to develop a good understanding of the potential value of such an easement for the purposes of the acquisition cost component of the cost analysis.

Research into the typical values for conservation easement purchases revealed a wide range of values consistent with the individualized and negotiated character of such transactions. The experience of the California Department of Fish and Game's (CDFG) conservation easement program for Central Valley wetlands is that easement values ranged from 25% to 75% of fee title value. Analysis of opportunity costs and agricultural values conducted by the Center for Natural Lands Management (CNLM) in support of the *Swainson's Hawk Habitat Conservation Program Mitigation Fee* in 1992, prepared for the City of Stockton, indicated that conservation easements under that program would cost, on average, about 40% of the full market price of equivalent land. Other factors considered by the CNLM analysis such as holding costs and the value of land removed from production increased to about 60% the overall cost of the conservation easement purchase relative to fee title acquisition. Interviews conducted for this cost analysis with bankers active in the San Joaquin County agricultural community supported 25% to 40% as a rough rule-of-thumb for estimating the value foregone to agricultural land with a conservation easement such as that proposed under the SJMSCP.⁶

The assumption used for the purpose of developing the land cost factors is that, on average, conservation easement purchase prices would be 50% of the fee title purchase price.

⁶

Please refer to page V-3 of the SJMSCP Economic Analysis for the list of persons consulted.

As the SJMSCP is implemented, all transactions will be negotiated and tailored to the characteristics of each parcel. All easement transactions will be based on a formal appraisal of each property under consideration. The assumption about easement value used in the cost analysis is a conservative factor for the purpose of estimates. It is not a ceiling or floor to the actual costs that might be paid.

Transaction Costs

Transaction costs are estimated at five percent of the total transaction value. The costs include title search, appraisal, title insurance, other closing costs, and recording any deed restrictions or conservation easements.⁷

ESTIMATED SJMSCP PRESERVE ACQUISITION COSTS PER ACRE BY INDEX ZONE (1996 DOLLARS)/c/

Preserve Type	Percent of Total/a/	Fee Title Cost per Acre	Easement Percent of Fee Title	Easement Cost Per Acre
Agricultural Habitat Lands				
<i>Primary Zone of the Delta</i>	3%	\$1,400		
<i>Central Zone</i>	97%	\$3,700		
<i>Weighted Average, Agricultural Habitat Lands</i>	100%	\$3,600	50%	\$1,800
Natural Lands				
<i>Riparian/b/</i>				
<i>Primary Zone of the Delta</i>	11%	\$1,400		
<i>Central Zone Riparian</i>	89%	\$3,700		
<i>Weighted Average, Riparian</i>	100%	\$3,500	50%	\$1,750
<i>Central Zone edges of agricultural lands and grasslands</i>		\$2,300	50%	\$1,150
<i>Southwest Zone Grasslands</i>		\$700	50%	\$350
<i>Vernal Pool Zone Upland Grasslands and Wetted Vernal Pool Surface Area</i>		\$1,100	50%	\$550

⁷

Based on a review of other habitat conservation plan studies including: CNLM, *San Joaquin County Swainson's Hawk Conservation Program Mitigation Fee Determination*, 1992/93; and Economic and Planning Systems, *Draft Economic Technical Background Report: Yolo County Habitat Management Plan*, June 1994.

- /a/ Percent of Preserve lands by habitat type anticipated for Preserves within each *SJMSCP Index Zone*. For cases in which habitat types span *Index Zones* with different land values, used to derive weighted average land cost factor by habitat type.
- /b/ Riparian habitat in *Primary Zone of the Delta* and *Central Zone*. Assumed to be primarily riparian edges of agricultural lands
- /c/ Fees based upon these figures will be adjusted to 1998 dollars pursuant to the California Construction Cost Index (CCCI) and Section 7.5.2.2 six months after the SJMSCP's Effective Date. Thereafter, fees will be adjusted annually as provided in Section 7.5.2.2 (See Exhibit 3 for full text).

Restoration And Enhancement Costs

Preserve lands acquired under the SJMSCP will undergo varying levels of enhancement as described in SJMSCP Section 5.4.6.

The elements of the cost assumptions for each Preserve Type are described below:

- A. The agricultural land enhancement cost of \$100 per acre covers the cost of planting hedgerows, construction and installation of nesting platforms, bat boxes, and burrowing owl sites, and other activities. The average per acre cost covers costs of enhancements to habitats which begin as relatively low-value habitats. See the next paragraph for enhancement costs for riparian edges within agricultural row and field crops.
- B. The riparian enhancement cost of \$600 includes extensive site preparation, plant propagations, irrigation, weed control, signing and fencing.
- C. The enhancement cost shown in the following table for the *Primary Zone of the Delta* submerged aquatic habitat covers the costs of restoring submerged aquatic habitat including costs for: site preparation, planting, ensuring that new plants are established.
- D. The enhancement cost for *Vernal Pool Zone* Large Area and Small Area Preserves is estimated at \$350 per acre. This reflects a mid-point of the range of similar wetland restoration costs reported by the CDFG.
- E. The grassland enhancement cost of \$80 per acre applies to grasslands in both the *Southwest Zone* and the *Vernal Pool Zone*. The cost includes fencing, testing the soil, preparing the site, propagating cuttings, and controlling exotics.
- F. The enhancement cost for vernal pool surface area is \$8,300 per Preserve acre. Estimates of the costs of creating vernal pools (surface or wetted area only) ranged from \$5,000 per acre to almost \$50,000 per acre. This cost analysis assumes \$25,000 per acre cost of the creation of new vernal pool surface area. Under the terms of the SJMSCP, compensation for Conversion of vernal pools would require three acres of Preserve for every one acre of Conversion; only one of those three acres would have to be a newly created vernal pool. Therefore, the enhancement cost per acre for all vernal pool surface area Preserve acres would be \$8,300 per acre (\$25,000 divided by 3 to equal \$8,300).

In addition, all of the enhancement costs above include the other initial costs of a biological assessment of the Preserve and preparation of a Preserve Management Plan.

ESTIMATED SJMSCP ENHANCEMENT/RESTORATION COSTS (1996 DOLLARS)/c/

Type of Preserve	Enhancement Cost per Preserve Acre
Agricultural Habitat Lands	\$100
Natural Lands	
<i>Central/Southwest Zone - Riparian</i>	\$600
<i>Primary Zone of the Delta - Submerged Aquatic</i>	\$1,200
<i>Primary Zone of the Delta - Water's Edge</i>	\$350
<i>Southwest Zone - Grasslands</i>	\$80
<i>Vernal Pool Zone - Wetted Surface Area with Creation of Vernal Pools/a/</i>	\$8,300
<i>Vernal Pool Zone - Wetted Surface Area of Vernal Pools With No Creation/b/</i>	\$40
<i>Vernal Pool Zone - Grasslands</i>	\$80

/a/ Based on an estimate of \$25,000 per wetted acre to create vernal pools. The creation cost only applies to one of every three acres of Preserves: \$25,000 divided by 3 equals \$8,300 per Preserve acre.

/b/ This component applies only to Vernal Pool Preserves established to offset impacts of Neighboring Land Protections as described in SJMSCP Section 5.3.3.4.

/c/ Fees based upon these figures will be adjusted to 1998 dollars pursuant to the California Construction Cost Index (CCCI) and Section 7.5.2.2 six months after the SJMSCP's Effective Date. Thereafter, fees will be adjusted annually as provided in Section 7.5.2.2 (See Exhibit 3 for Text).

Management Endowment Costs

Preserve lands acquired under the SJMSCP will undergo varying levels of management as described in SJMSCP Sections 5.4.7 and 5.4.8.

The acquisition and enhancement costs represent the initial capital costs of securing and establishing the SJMSCP Preserves. The SJMSCP must also ensure that those lands are managed in perpetuity for the benefit of plants, fish and wildlife.

Management costs will be satisfied by a one-time, up-front endowment payment, the interest on which is anticipated to be adequate to support Preserve management needs in perpetuity.

The costs for on-going Preserve management used in this cost analysis are based upon precedent established by the California Department of Fish and Game for mitigation of impacts to Swainson's hawk habitat in the Central Valley,⁸ and on analyses conducted by the Center for Natural Lands Management,

⁸ *Memorandum and Staff Report Regarding Mitigation for Impacts to Swainson's hawks in the Central Valley of California, November, 1994.*

both specific to San Joaquin County and more broadly applicable to land management situations generally.⁹

The generalized CNLM research investigated on-going annual costs of Preserve management. The implied endowment per acre for the cases analyzed and the proposals estimated ranged from just over \$100 per acre to almost \$7,000 per acre for Preserve management. The properties and projects analyzed in the CNLM study were all fee title Preserves implying a higher level of management than would be the case with Preserves acquired via conservation easements. A key conclusion of the CNLM study is that the variability in per acre costs, depending on goals, management styles, and property characteristics, makes management costs difficult to predict. Another conclusion is that there appears to be significant economies of scale to these costs.

The tasks of on-going Preserve management include annual biological assessments, periodic Preserve management and enhancement plan updates and associated overhead, Preserve maintenance, fencing, signage, and similar activities. Assuming an annual investment income stream of five percent were funding these costs, the one-time endowment required is estimated to be \$400 per Preserve acre for agricultural habitat lands and grasslands. Higher costs (resulting in an endowment of \$560 per Preserve acre) are assumed for riparian habitats and Delta aquatic Preserve lands.

The following table summarizes the costs of endowments per Preserve acre for management of Preserves within each *SJMSCP Index Zone* and within each Preserve Type within each *SJMSCP Index Zone*.

⁹ Center for Natural Lands Management, *San Joaquin County Swainson's Hawk Conservation Program Mitigation Fee Determination*, 1992 and *Habitat Management Cost Analysis*, 1994.

SJMSCP MANAGEMENT COST FACTORS (1996 DOLLARS)/b/

Type of Preserve	Management Cost per Preserve Acre
Agricultural Habitat Lands	\$400
Natural Lands	
<i>Central/Southwest Zone - Riparian</i>	\$560
<i>Primary Zone of the Delta - Submerged Aquatic</i>	\$560
<i>Primary Zone of the Delta - Water's Edge</i>	\$400
<i>Southwest Zone - Grasslands</i>	\$400
<i>Vernal Pool Zone - Creation of Vernal Pools</i>	\$400
<i>Vernal Pool Zone - Preservation of Existing Vernal Pools Wetted Surface Areas/a/</i>	\$400
<i>Vernal Pool Zone - Grasslands</i>	\$400

/a/ This component applies only to Vernal Pool Preserves established to offset impacts of Neighboring Land Protections as described in SJMSCP Section 5.3.3.4.

/b/ Fees based upon these figures will be adjusted to 1998 dollars pursuant to the California Construction Cost Index (CCCI) and Section 7.5.2.2 six months after the SJMSCP's Effective Date. Thereafter, fees will be adjusted annually as provided in Section 7.5.2.2 (See Exhibit 3 for Text).

Administration Costs

The costs for SJMSCP administration are also expressed as a one-time endowment payment, the annual interest on which would support on-going costs over the long term. These costs include initial and on-going staffing of the JPA, preconstruction surveys, conservation easement monitoring, accounting, insurance, overhead, and contingency (for legal defense and emergency). The estimated cost of endowment for Plan administration is \$100 per Preserve acre for all Preserve Types. These costs are based on a review of the same documents cited in the preceding section related to management costs.

Summary of SJMSCP Costs

The following tables summarize the total costs of the SJMSCP including costs for acquiring, enhancing, monitoring, and managing Preserves and for administering the SJMSCP developed from the preceding cost analysis--both with and without the costs of shaded riverine aquatic habitat. The costs are expressed as costs per Preserve acre (these are the costs for acquiring, enhancing, and managing Preserves and for SJMSCP administration and are not equal to the development fees to be paid under the SJMSCP for the reasons described in Section 7.3).

The costs are based on the assumption that Agricultural Habitat Land Preserves and the riparian corridors

and water's edge habitats running through those lands would be acquired by means of conservation easements while some vernal pool and other grassland Preserves would be acquired in fee title.

SJMSCP COST ESTIMATES PER ACRE

Type of Preserve	Land Acquisition /a/	Transaction Cost	Enhancement Cost	Land Management and Endowment	Administration	TOTAL COST	Percent of Total Preserve Lands /c/
Agricultural Habitat Lands	\$1,800	\$90	\$100	\$400	\$100	\$2,490	57%
Natural Lands							
Riparian	\$1,750	\$88	\$600	\$560	\$100	\$3,098	19%
Other Water's Edge	\$1,150	\$58	\$350	\$400	\$100	\$2,058	2%
Southwest Grasslands	\$700	\$35	\$80	\$400	\$100	\$1,315	4%
Delta Submerged Aquatic	\$700	\$35	\$1,200	\$560	\$100	\$2,596	<1%
Vernal Pool Surface (Created)	\$1,100	\$55	\$8,300	\$400	\$100	\$9,955	2%
Vernal Pool Surface and Grasslands (Not Created)/b/	\$550	\$30	\$120	\$400	\$100	\$1,200	<1%
Vernal Pool Grasslands (Upland Grassland)	\$1,100	\$55	\$80	\$400	\$100	\$1,735	16%
<i>Subtotal Natural Lands</i>	\$1,360	\$80	\$730	\$470	\$100	\$2,730	43%
GRAND TOTAL/c/	\$1,610	\$83	\$368	\$433	\$100	\$2,593/c/	100%
Percent of Total	62%	3%	14%	17%	4%	100%	

/a/ Assumes conservation easements for agricultural, riparian, and other water's edge lands. Assumes fee title acquisition for grasslands (vernal pool) except for .

/b/ This component applies only to Vernal Pool Preserves established to offset impacts of Neighboring Land Protections as described in SJMSCP Section 5.3.3.4. Because creation is not required for this component, acquisition of easements rather than fee title acquisition is assumed.

/c/ Weighting factor used to derive cost over all Preserve lands.

SJMSCP COST ESTIMATES PER ACRE

100,841 ACRE OF PRESERVES

	VERNAL POOL HABITAT (17,682 Acres Preserves)				AGRICULTURAL HABITAT LANDS AND NON-VERNAL POOL NATURAL LANDS OPEN SPACES (82,559 Acres Preserves)				NEIGHBORING LAND PROTECTION PRESERVES (600 Acres)			
	Vernal Pool Surface Area (Created)/a/ (2,122 Acres of Preserves)		Vernal Pool Grassland (15,560 Acres of Preserves)		Agricultural Habitat and Non- Vernal Pool Natural Lands Except for Submerged Aquatic (82,550 Acres of Preserves)		Submerged Aquatic (9 Acres)		Vernal Pool Surface Area and Grasslands - No Creation (250 Acres)		Agricultural Habitat Land and Non-Vernal Pool Natural Land Neighboring Land Protection Preserves (350 Acres)	
Component	Cost Per Preserve Acre	Total Cost	Cost Per Preserve Acre	Total Cost	Cost Per Preserve Acre	Total Cost	Cost Per Preserve Acre	Total Cost	Cost Per Preserve Acre	Total Cost	Cost Per Preserve Acre	Total Cost
Acquisition/b/	\$1,155	\$2,450,910	\$1,155	\$17,971,800	\$1,810	\$149,415,500	\$735	\$6,615	\$580	\$145,000	\$1,810	\$633,500
Enhancement	\$8,300	\$17,612,600	\$80	\$1,244,800	\$220	\$18,161,000	\$1,200	\$10,800	\$120/c/	\$30,000	\$220	\$77,000
Land Management	\$400	\$848,800	\$400	\$6,224,000	\$440	\$36,322,000	\$560	\$5,040	\$400	\$100,000	\$440	\$154,000
Administration	\$100	\$212,200	\$100	\$1,556,000	\$100	\$8,255,000	\$100	\$900	\$100	\$25,000	\$100	\$35,000
TOTAL COST	\$9,955	\$21,124,510	\$1,735	\$26,996,600	\$2,570	\$212,153,500	\$2,595	\$23,355	\$1,200	\$300,000	\$2,570	\$899,500

/a/ This "created" component refers to the SJMSCP's compensation ratio of 3:1 for Conversion of vernal pool habitats for activities covered by the SJMSCP whereby two acres of existing vernal pool acres are preserved and one acre is created. This component does not include vernal pool preserves established pursuant to the SJMSCP to address impacts associated with Neighboring Land Protections.

/b/ Including transaction costs

/c/ Costs of enhancing upland grasslands (\$80) plus cost of enhancing wetted surface area (\$40) equals \$120.

TOTAL ESTIMATED PLAN COSTS PER ACRE/a/
ALL PRESERVE TYPES
100,841 Acres of Preserves

Component	Cost Per Preserve Acre/b/	Total Cost/b/	Percentage of Total Cost
Acquisition/c/	\$1,692	\$170,623,325	65%
Enhancement	\$368	\$37,136,200	14%
Land Management	\$433	\$43,653,840	17
Administration	\$100	\$10,084,100	4%
TOTAL COST	\$2,593	\$261,497,465	100%

/a/ Totals are from Table on preceding page

/b/ Rounded to nearest dollar

/c/ Including transaction costs

The total per acre cost ranges from about \$1,300 for the southwest grassland Preserves to almost \$10,000 for vernal pool surface area (attributable to the high enhancement costs for this Preserve Type). The total cost for Agricultural Habitat Lands and Riparian Preserves (together representing almost 90% of all Preserve lands) would range from \$2,500 per acre to \$3,100 per acre.

The grand total cost of \$2,593 per acre is the average cost over all types of Preserves, weighted by the expected distribution of Preserve land by type.

2. Relationship Between the Conservation Fee and Habitat/Open Space Loss

Constitutional principles, California statutes and case law require that developer fees be reasonably related to the development impact they purport to address. That is, the fee must be used for a thing or activity that helps to resolve the problem identified in the impact; the fee cannot exceed the amount necessary to resolve the impact; and the fee must be roughly proportional to the developer's contribution to that impact. Compliance with the first two criteria is clear from the discussions throughout this report. It is the last of these criteria, identifying new development's contribution to the loss of habitat lands, which is established in the following:

The Fee recognizes the Contribution of Existing Development to the Cumulative Loss of Habitat Lands, the Varying Biological Values of Habitats, and the Multi-Purpose Functions of Open Space/The Amount of the Fee is Appropriate to Mitigate Cumulative and Site-Specific Habitat Loss

The SJMSCP is a multi-species habitat conservation and Open Space plan. The purpose of the SJMSCP is to encourage continued development and economic growth consistent with current general plans of San

Joaquin County and the seven cities in the County, while at the same time providing a means of protecting permanent habitat and Open Space lands for the benefit of plants, fish, wildlife and human populations.

Implementation of the SJMSCP requires a funding proposal that is equitable and acceptable, while compensating for the loss of Open Space and habitat resources. The approach to the fair share apportionment of Plan costs is guided by the language and intent of general plan documents in San Joaquin County and its seven cities. These general plans contain policies establishing the value and importance of environmentally sensitive lands and Open Space resources to agricultural productivity, biodiversity, and the welfare of county residents (see Exhibit 1).

Those plans also document how habitat and Open Space are becoming increasingly scarce resources in San Joaquin County. Past Open Space land Conversion has contributed to the current need for preservation, and future development of Open Space and habitat will reduce even further the acreage of those resources. Permanent preservation of Open Space and habitat is needed to offset that impact and to formalize a land conservation component of local land use planning. The Plan has clear benefit not only to new residents and businesses in San Joaquin County, but to existing residents and businesses as well.

Consistent with this policy direction, the proposed funding plan spreads costs of permanently preserving Open Space and habitat land in San Joaquin County among all those who benefit: existing residents and businesses and future development and related activities in the County. Or, restated, the costs of the SJMSCP shall be paid by two categories of beneficiaries as follows:

- A. **New Development** (i.e., those undertaking new development projects pursuant to the SJMSCP). This category shall be funded primarily through the payment of development fees by individuals undertaking new development projects pursuant to the SJMSCP. Development fees are derived and described in Section 7.4.1.
- B. **Other Sources** (i.e., sources other than those undertaking new development projects pursuant to the SJMSCP). This category shall be funded through state and federal funding sources (which represent the local resident beneficiaries), conservation banking, lease revenues, revolving funds/resales, investments and similar sources (see Exhibit 3 for Funding Plan).

To determine what share of the total SJMSCP costs should be allocated to each of these two funding categories, the SJMSCP planners turned to history.

SJMSCP planners concluded that the current threats to the long-term survival of SJMSCP Covered Species and the current need to preserve agricultural lands, scenic and recreational resources, and other beneficial Open Space uses in the County cannot be blamed solely on new development projected to occur between 2001-2051. Past, unmitigated Conversions of Open Spaces prior to 2001 (e.g., agriculture, urban and rural development, public utility projects, flood control projects, and similar activities occurring since at least 1849) have contributed to the current declining status of SJMSCP Covered Species, SJMSCP Covered Species habitats, and other beneficial Open Space uses in San Joaquin County and throughout California. Therefore, SJMSCP planners decided that an allocation of costs based upon the relationship of past Open Space Conversions (1849± - 2001) to future Open Space Conversions (2001 -2051) would be the most straightforward and defensible means of determining a fair share allocation of the costs of future Open Space Conversions between new development funding sources and other funding sources.

The result, as illustrated in the following table, is the allocation of 62%± of total Plan costs to new

development and 38%± of total Plan costs to other funding sources.

**PAST AND FUTURE OPEN SPACE LAND CONVERTED IN SAN JOAQUIN COUNTY
BY SJMSCP PERMITTED ACTIVITIES THROUGH BUILDOUT**

LAND USE CATEGORY	ACRES	PERCENT OF TOTAL
Existing Urban Development ¹⁰	59,299	36%
Existing Barren ¹¹	3,585	2%
<i>Subtotal Past Conversion</i>	<i>62,884</i>	<i>38%</i>
Future Urban Development	75,608	45%
Aggregate Mining	10,770	6%
Public Agency Activities	3,655	2%
Other Permitted Activities	8,387	5%
Anticipated Projects per Section 8.2.1 ¹²	4,988	3%
<i>Subtotal Future Conversion</i>	<i>103,408</i>	<i>62%</i>
TOTAL CONVERSION	166,292	100%

As illustrated in the preceding table, new development will be responsible for Converting 62% of the County's total Converted Open Spaces to non-Open Space use by the year 2051. Therefore, new development will pay 62% of the total SJMSCP costs. 38% of total Open Space Conversions expected to occur in San Joaquin County by the year 2049 have already occurred. Therefore, other (non-development) funding sources will be used to pay the remaining 38% of total SJMSCP costs.

In summary, the SJMSCP cost allocation approach simply uses the relationship of past to future Open Space Conversions as a basis for allocating all SJMSCP costs amongst new development and other funding sources. Pursuant to this approach, new costs are not added to the SJMSCP, additional fees will not be collected to pay for past impacts to Open Spaces, and, while implementation of the SJMSCP may offset some past impacts to Open Spaces, it is not the intent of this fair share cost allocation approach to mitigate past impacts to Open Spaces (more aggressive efforts such as these are sometimes undertaken through the implementation of recovery plans). This cost allocation approach is used by the SJMSCP **only** to equitably distribute the costs of mitigating for Open Space Conversions occurring between in a manner which is both legally defensible and politically acceptable.

¹⁰ Does not include 31,570 acres of urban lands

¹¹ Barren lands include quarries, landfills, feedlots, nurseries and dredge tailings.

¹² Does not equal 5,000 acres due to exclusion of vernal pools, except for those included under agricultural activities triggering the requirements of the ESA or CESA and/or Section 404

The 62% / 38% allocation of SJMSCP costs is translated into dollars and cents terms as follows:

First, the 62% / 38% fair share allocation is rounded to a 60% / 40% cost share, for simplicity. Next, the total SJMSCP costs attributed to vernal pools is removed from the total costs of the SJMSCP. The costs for vernal pool habitat acquisition, enhancement, creation, management, and administration are removed because, per the fair share allocation table, historically, most land Conversion in the past occurred on the valley floor where few vernal pools were present (most vernal pools are located in the eastern foothills of the County; other wetlands, such as marshlands, were located on the valley floor). Therefore, all future vernal pool Conversion costs are attributed entirely to new development.

The fair share distribution of costs is then applied to the actual estimated net costs of the SJMSCP, as indicated in the following table:

**ALLOCATION OF TOTAL SJMSCP COSTS
BASED ON PAST AND FUTURE LAND CONVERSION**

COST ALLOCATION	AMOUNT
Total SJMSCP Cost (see Table 7.2.5-2)	\$261,497,465
Minus Cost for Acquiring, Enhancing, Managing, and Administering 600 Acres Neighboring Land Protection Preserves	-\$1,199,500
Minus Total Cost for Vernal Pool Habitat and Open Space Acquisition, Enhancement, Creation, Management, and Administration Excluding Neighboring Land Protection Preserves (see Table 7.2.5-2)	-\$48,121,110
Net SJMSCP Cost	\$212,176,855/a/
Costs to be Paid by Other Funding Sources (40% of net cost)	\$84,870,742/b/
Costs to be Paid by New Development Funding Sources (60% of net cost)	\$127,306,113/c/

/a/ Rounded to \$212,000,000

/b/ Rounded to \$84,900,000

/c/ Rounded to \$127,300,000

Development Fees

As described, new development will pay approximately 60% of total SJMSCP costs. While those undertaking new development pursuant to the SJMSCP may opt to dedicate lands consistent with the SJMSCP Preserve designs or to purchase credits from mitigation banks, most of the 60% contribution to the SJMSCP costs from new development will be in the form of development fees.

Development fees for the SJMSCP are divided into three categories:

- A. Vernal Pool Habitat Conversion Fee
- B. Natural Land and Agricultural Habitat Land Conversion Fee
- C. Multi-Purpose Open Space Conversion Fee

Development fees shall be paid on a per-acre basis in accordance with the type of habitat land being Converted from Open Space use to non-Open Space use (Vernal Pool Habitat, Non-Vernal Pool Natural Land, Agricultural Habitat, or Multi-Purpose Open Space Land).

An alternative fee is established for the removal of elderberry shrubs during maintenance activities pursuant to SJMSCP Section 5.5.4(D). That fee is described at the end of this discussion.

The fees for Vernal Pool Habitat Conversion, Non-Vernal Pool Natural Land and Agricultural Habitat Land, and Multi-Purpose Open Space Lands are as follows:

Vernal Pool Habitat Conversion Fee

Vernal pool development fees were calculated by taking the total estimated cost of acquiring, enhancing, monitoring, managing, and administering 17,682 acres of vernal pool Preserves over the 50-year life of the Plan (5,894 acres anticipated to be Converted from vernal pool grassland at a replacement ratio of two acres preserved plus one acre created, or 3:1), and dividing these costs by the total estimated number of acres of vernal pool habitat to be Converted under the SJMSCP, or 5,894 acres. This results in a fee, for wetted surface area, of \$30,000 per acre and a fee of \$5,000 per acre for upland grasslands surrounding vernal pools. These calculations are based on an assumption that 12% of a given acre of vernal pool grassland is composed of wetted surface area and the remainder is upland grassland. Therefore, the fee for Converting a single acre of vernal pool grassland habitat with a 12% wetted surface area is \$8,000.

CALCULATION OF DEVELOPMENT FEES FOR VERNAL POOL HABITAT LANDS

	Wetted Surface Area	Upland Grassland
Total cost/a/	\$21,124,510	\$26,996,600
Acres of Conversion/b/	707	5,187
Development Fee (calculated)/c/	\$29,879	\$5,205
Development Fee (rounded) /d/	\$30,000	\$5,000

- /a/ Costs of acquisition, creation and enhancement, land management, and administration of vernal pool Preserves
 /b/ For the full 50-year term of the Plan. Vernal pool wetted surface area is estimated at 12% of total vernal pool acreage. The balance is upland grasslands.
 /c/ Total cost divided by acres of Conversion.
 /d/ This results in an overall average impact fee of \$8,000 per acre for vernal pool grassland assuming 12% wetted surface area (12% wetted surface area/acre X \$30,000/acre = \$3,600; 88% upland grasslands/acre X \$5,000/acre = \$4,400; \$3,600/acre + \$4,400/acre = \$8,000/acre).

Agricultural Habitat Lands, Non-vernal Pool Natural Lands And Multi-purpose Open Space Lands

In addition to the "fair share" allocation of SJMSCP costs discussed in the preceding, the 60% of SJMSCP costs to be paid by new development also shall be shared. Specifically, all those undertaking new development pursuant to the SJMSCP shall pay a development fee, even those individuals converting Open Space lands which may have a low habitat value. This sharing of costs among all individuals avoids burdening any single sector of the community with the entire cost of the SJMSCP. More importantly, this approach also assists in implementing the general plans provisions of San Joaquin County and the seven incorporated cities within San Joaquin County. Specifically, those plans require, in addition to compensating for the plant, fish and wildlife values of Open Spaces, that compensation also shall be required for the Conversion of Open Spaces from agricultural uses, recreational uses, scenic uses, flood protection and other beneficial Open Space uses.

As noted in SJMSCP Section 4.1 (See Exhibit 3 for Text), Natural Lands and Agricultural Habitat Lands are used by SJMSCP Covered Species for breeding, feeding and sheltering. Therefore, the Conversion of Open Space lands classified as Natural Lands or Agricultural Habitat Lands may result in Incidental Take.

Conversion of lands in these Open Space categories requires compensation pursuant to the SJMSCP (through acquisition, enhancement, management, and administration) as described in Section 4.1 of the SJMSCP.

In contrast to Natural Lands and Agricultural Habitat Lands, the Conversion of Multi-Purpose Open Space Lands does not result in Incidental Take and does not require compensation in the form of Preserve acquisition. Instead, compensation for Multi-Purpose Open Space Lands is as follows:

Multi-Purpose Open Space Lands: According to the SJMSCP Biological Analysis and the Permitting Agencies, the Conversion of Multi-Purpose Open Space Lands is important to common plant, fish and wildlife species and may, indirectly, provide limited benefits to SJMSCP Covered Species (e.g., as movement corridors, supplemental foraging areas, etc.). Because of the relatively limited importance of Multi-Purpose Open Space Lands to SJMSCP Covered Species, the SJMSCP Biological Analysis and the Permitting Agencies determined that activities contributing to the Conversion of SJMSCP Multi-Purpose Open Spaces does not require compensation in the form of acquiring Preserves. However, pursuant to the California Environmental Quality Act, the cumulative impact of eliminating Multi-Purpose Open Spaces is significant and adverse to common plant, fish and wildlife species and, therefore, the Conversion of Multi-Purpose Open Spaces shall share in the costs of enhancing, maintaining and administering Open Space Preserves pursuant to the SJMSCP. In this manner, the Conversion of Multi-Purpose Open Space lands does not trigger a requirement to add Preserve acres to the SJMSCP Preserve system. Instead, the Conversion of Multi-Purpose Open Space lands triggers a requirement to assist in financing the SJMSCP Preserve system by supporting a portion of the enhancement, management and administration costs associated with the Preserve system.

In addition to this biological approach to compensation for Open Spaces, the SJMSCP also takes a non-biological approach to Open Space compensation. As noted in preceding paragraphs, the SJMSCP is a multi-species habitat conservation and Open Space plan. This means that, in addition to plant, fish and wildlife benefits, the SJMSCP considers the non-wildlife value of Open Spaces including agricultural, educational, recreational, scenic, flood control and other beneficial Open Space uses. These non-wildlife benefits are provided by Agricultural Habitat Lands, Natural Lands and Multi-Purpose Open Space lands.

This non-biological view of Open Spaces is supported by the general plan policies of San Joaquin County's seven cities and the County itself. These general plans contain policies establishing the value and importance of environmentally sensitive lands and Open Space resources to agricultural productivity, biodiversity, and the welfare of county residents (see Exhibit 1). These general plans call for programs to offset both the biological and non-biological impacts of Converting Open Spaces to non-Open Space use. The SJMSCP recognizes the multiple uses and benefits of Open Spaces and, while its primary purpose is to provide comprehensive mitigation to offset impacts to plants, fish and wildlife and their habitats, the establishment of Open Space Preserves will also offset many non-biological impacts associated with the Conversions of Open Spaces consistent with the directives of local general plans.

Consistent with this multi-use/multi-benefit view of Open Spaces, the proposed funding plan spreads costs of permanently preserving Open Space and habitat land in San Joaquin County among not only new development, but also among other beneficiaries of the SJMSCP. Therefore, fees will be paid, pursuant to the SJMSCP, for the Conversion of all Open Space land categories: Agricultural Habitat Lands, Natural Lands (vernal pool lands as described above and non-vernal pool lands as described here), and Multi-Purpose Open Space Lands.

This spreading of costs among all categories of Open Space lands requires that a relative value be established for each category of Open Space land. To establish the relative value of Agricultural Habitat Lands and Natural Lands versus Multi-Purpose Open Space Lands, the funding analysis considered a number of options in an attempt to set forth a policy proposal that would be clear and accepted as fair for assigning fees to Agricultural Habitat Lands and non-vernal pool Natural Lands versus Multi-Purpose Open Space Lands. The adopted policy is to value land that has high habitat value and other Open Space benefits at two times the value of land that has Open Space value, but low habitat value. Said another way, the Conversion of Agricultural Habitat Lands, such as row and field crops, and non-vernal pool Natural Lands, such as oak woodlands or grasslands in the *Southwest Zone*, counts for twice the impact of Conversion of Multi-Purpose Open Space Lands, such as orchards and vineyards.

In terms of the SJMSCP's fee structure, this means that the Conversion of lands of high habitat value (Agricultural Habitat Lands and non-vernal pool Natural Lands) will require a fee twice as large as the fee paid for Converting Multi-Purpose Open Space Lands. The following table presents the application of this policy in terms of the development impact fee calculation for Conversion of Multi-Purpose Open Space Lands. Applying the multiplying factor of two, representing the relative value of Agricultural Habitat Lands and non-vernal pool Natural Lands, results in the following development impact fees.

In the following table, the fees for Agricultural Habitat Lands, non-vernal pool Natural Lands and Multi-Purpose Open Space Lands are determined by dividing the total cost of acquiring, enhancing, managing and administering Preserves to compensate for Converting Open Spaces in all three land categories. Multi-Purpose Open Space fees are assigned a value of half that assigned to Agricultural Habitat and non-vernal Pool Natural Lands. The total compensation costs of \$127,300,000 are divided by the sum of all Agricultural Habitat and non-vernal pool Natural Lands to be Converted plus one-half the total number of Multi-Purpose Open Space acres to be Converted. This results in a fee of \$1,500 per acre for Agricultural Habitat and non-vernal pool Natural Lands. The fee for Multi-Purpose Open Spaces is half of the Agricultural Habitat/non-vernal pool Natural Lands fee of \$1,500, or \$750 per acre.

**CALCULATION OF DEVELOPMENT IMPACT FEE BASED ON
FAIR SHARE ANALYSIS**

DEVELOPMENT IMPACT FEE CALCULATION FACTORS	AMOUNT
Estimated Cost of Compensation for Agricultural Habitat Land and Non-Vernal Pool Natural Land to be Converted (see Table 7.3-2)	\$127,300,000/a/
Estimated Acres of Agricultural Habitat Land and Non-Vernal Pool Natural Land (including Submerged Aquatic Habitat) to be Converted /b/	65,943
Estimated Acres of Multi-Purpose Open Space Land to be Converted (see Table 4.2-2)	37,465
Multiplier for Agricultural Habitat Land and Non-Vernal Pool Natural Land Conversion (see this section)	1
Multiplier for Multi-Purpose Open Space Conversion (see this section)	0.5
<p style="text-align: center;">FORMULA FOR CALCULATING AGRICULTURAL HABITAT LAND AND NON-VERNAL POOL NATURAL LAND IMPACT FEE</p> <p style="text-align: center;">$(65,943 \times Y) + (37,465 \times .5Y) = \\$127,300,000$</p> <p style="text-align: center;">where Y equals impact fee for Conversion of Agricultural Habitat Lands and Non-Vernal Pool Natural Lands. Thus,</p> <p style="text-align: center;">$Y = \\$127,300,000 / [65,943 + (.5 \times 37,465)]$</p> <p style="text-align: center;">$Y = \\$127,300,000 / 84,676$</p> <p style="text-align: center;">$Y = \\$1,503$, rounded to \$1,500</p>	
Impact Fee for Conversion of Agricultural Habitat Lands and Non-Vernal Pool Natural Lands (using 1x multiplier)	\$1,500
Impact Fee for Conversion of Multi-Purpose Open Space (using .5x multiplier)	\$750

/a/ Rounded from \$127,306,113

/b/ Agricultural Habitat Land (57,635 acres) + Natural Lands (14,202 acres) - Vernal Pool Natural Lands (5,894 acres) = 65,943 acres.

Summary of SJMSCP Fees

In summary, the SJMSCP requires payment of development fees according to the types of habitat Converted to non-Open Space uses as follows:

Vernal Pool Habitat: \$30,000 for wetted surface area and \$5,000 for upland grasslands, or an \$8,000 per acre average cost, assuming 12% of each vernal pool grassland acre is wetted surface area. Thus, a fee of \$8,000 per acre will be required for each acre of vernal pool grassland Converted to non-Open Space when individuals elect not to undertake a wetland delineation to establish a wetted surface area of less than 12%. Individuals may hire qualified biologists, at their own cost, to undertake wetland delineations to establish a wetted surface area of less than 12% of the total acreage. Fees will then be calculated based upon the actual wetted surface area and upland grassland totals (@ \$30,000 and \$5,000 per acre, respectively) when wetland delineations, approved by the U.S. Army Corps, are submitted.

Non-Vernal Pool

Natural Lands: \$1,500 per acre

Agricultural Habitat

Lands: \$1,500 per acre

Multi-Purpose Open

Space Lands: \$750 per acre

These fees will be adjusted to 2001 dollars pursuant to the California Construction Cost Index (CCCI) and SJMSCP Section 7.5.2.2 (See Exhibit 3 for SJMSCP Text) six months after the SJMSCP's Effective Date. Thereafter, fees will be adjusted annually as provided in Section 7.5.2.2 (See Exhibit 3 for SJMSCP Text).

VELB Mitigation Fee for Maintenance Activities which Do Not Convert Habitat

A special fee category for maintenance activities shall apply when removal of elderberries occurs for maintenance. The fee shall be paid to a VELB mitigation bank approved by the Permitting Agencies. The current fee, as established in the VELB Conservation Fund Account managed by the Center for Natural Lands Management, and approved by the USFWS, is \$1,800 per VELB Unit (one unit= one stem over 1" in diameter at ground level which is removed). Fees shall be established by the JPA during preconstruction surveys (i.e., counts of stems to be removed with and without exit holes shall be completed during preconstruction surveys) and shall be paid to the JPA prior to ground disturbance or stem removal, whichever comes first.

The Fee Amount Will Not Unduly Discourage Housing Production, Especially At Affordable Levels

As discussed in Section 5.9 of the Draft Joint Environmental Impact Report/Environmental Impact Study for the SJMSCP, dated September 23, 1999, the Fee Amount is expected to reduce costs of providing affordable housing and, therefore, will not unduly discourage housing production, especially at affordable levels:

Effects of the SJMSCP on the cost and availability of affordable housing are not expected to differ significantly in comparison to the No Project/No Action Alternative. However, the cost-benefit analysis prepared for the SJMSCP [summarized in this analysis in *Section 7.6B See Exhibit 3 for full Text*] indicates that the cost of completing most projects using the SJMSCP Preferred Project is lower than the cost of completing projects pursuant to the No Project/No Action Alternative. Secondly, participation in the SJMSCP or SJMSCP Alternatives is voluntary. Therefore, proponents of affordable housing projects always retain the right to pursue either the No Project/No Action Alternative or the SJMSCP, whichever is least costly. In addition, most multi-family affordable housing projects are proposed for urban areas of the County located near

existing services. Based on the vegetation analyses conducted for the SJMSCP, these projects are normally located in already urbanized areas with very low plant, fish or wildlife habitat value and are, therefore, subject to the lowest proposed SJMSCP development fees. Finally, the availability of land for affordable housing will not be different under the SJMSCP than it would be under the No Project/No Action Alternative since no land use changes are proposed by the SJMSCP. Therefore, there is a potential for the SJMSCP to result in a lower development cost for affordable housing than currently exists with the No Action alternative--another potential beneficial impact of the project.

The Amount of the Fee will Generate Sufficient funds to Provide Meaningful Mitigation for Cumulative Habitat Loss

The amount of the fee established in the preceding paragraphs is based upon a 3:1 compensation ratio for Conversions of Natural Habitat and a 1:1 compensation ratio for Agricultural Habitat Lands. Along with other identified funding sources, the fee is expected to purchase, administer, enhance and monitor 100,841 acres of Preserve lands.

Lands to be Converted by SJMSCP Covered Activities are largely located close to existing, fragmented, developed areas, where the likelihood of long-term survival of species within those areas is impaired. Scattered, small, individual sites are currently being established as mitigation occurs on a project-by-project basis within the county. Under the SJMSCP, Preserves will be purchased as large tracts of interconnected habitats located well outside urban areas, where species have greatly increased chances for long-term survival.

A more detailed evaluation of the biological likelihood of success based on the preceding can be found in Sections 5.3.8 and 5.3.18 of the Draft Joint Environmental Impact Report/Environmental Impact Study for the SJMSCP, dated September 23, 1999.

E. Collection/Calculation of Conservation Fees

Collecting Fees

Per 5.3.2.3 of the SJMSCP, fees shall be collected at either Building Permit or Grading Permit as prescribed in the following:

Under the normal permitting process implemented by local government jurisdictions in San Joaquin County, ground disturbance (including grading) may occur prior to the local government jurisdiction's issuance of a Building Permit. For example, once a *tentative* subdivision map to create new residential lots is approved by a local government agency (e.g., the City of Tracy's City Council or the San Joaquin County Board of Supervisors) with conditions, the Project Proponent must fulfill many of the project conditions (e.g., constructing new roads or installing water or sewer lines) before gaining approval of a *final* subdivision map. Once the final subdivision map is completed, new residential lots may be sold to the general public. Once a newly created subdivision lot is purchased, the new owner of the lot normally applies for a Building Permit to construct a new home on the newly created subdivision lot.

However, different development projects may undergo variations in this permitting process (e.g., Project Proponents may receive only Building Permits for small projects which address both building and grading activities, but Project Proponents are not required to secure Grading Permits due to the relatively small amounts of dirt being moved by the project). The majority of development projects in San Joaquin County require Building Permits during at least one phase of the development process. Many of San

Joaquin County's largest projects also require Grading Permits. Therefore, given this variation in the types of permits which may be issued at varying times during the development process, the following provisions shall be implemented 1) to address the variations in the types of permits required, and timing of the acquisition of those permits, for the various development projects in San Joaquin County, 2) to provide a uniform approach amongst the local government agencies for timing the collection of fees or requiring purchases of mitigation banking credits, 3) to provide maximum flexibility for developers to finance their projects without creating adverse impacts to SJMSCP Covered Species, and 4) to ensure that compensation will occur pursuant to the SJMSCP by using familiar permitting procedures already used by local government agencies:

For so long as the 350-acre jump-start (Section 8.6) remains in place, the timing of compensation pursuant to the SJMSCP shall be as follows:

- A. Collection of Fees/Purchase of Mitigation Banking Credits for Projects Less Than or Equal to 350 Acres in Size (projects equivalent in size or smaller than the jump-start): collection of fees or purchase of banking credits will occur prior to or at the time of issuance of Building Permits so long as Site Disturbance without compensation (i.e., grading or vegetation removal has occurred with or without permits, but Building Permits have not yet been issued) does not exceed 500 acres total at any time during the term of the SJMSCP for SJMSCP Permitted Activities undertaken by project proponents opting for coverage pursuant to the SJMSCP. When Site Disturbances without compensation pursuant to this provision reaches 500 acres total, then the JPA and Permittees shall require the fee collections or purchase of banking credits for projects less than or equal to 350 acres in size to occur pursuant to the same schedule as required for projects exceeding 350 acres as described in paragraph B.
- B. Collection of Fees/Purchase of Mitigation Banking Credits for Projects Exceeding 350 Acres: collection of fees for land acquisition or purchase of banking credits will occur either:
 - 1. Prior to issuance of a Grading Permit (or prior to Ground Disturbance if no Grading Permit is required) ; or,
 - 2. The Project Proponent may bond for payment of the applicable SJMSCP fees prior to the issuance of a Grading Permit (or prior to the commencement of Ground Disturbance if no Grading Permit is required). Bonds posted pursuant to this provision shall be released, to the extent possible, after full project buildout and after all appropriate fees have been paid with respect to each building permit associated with the project. Provisions for releasing portions of the bond as buildout progresses may be established on a case-by-case basis upon request of the Project Proponent. Only bonds issued by a bond surety admitted in California by the California Department of Insurance will be accepted unless otherwise approved by the JPA with the concurrence of the Permitting Agencies.
- C. Collection of Fees/Purchase of Mitigation Banking Credits for Conversion of Vernal Pool Grasslands to Orchards and Vineyards shall occur prior to ground disturbance.
- D. Land Dedications in Lieu of Fee Payments or in Lieu of Mitigation Banking Regardless of Project Size: Shall occur prior to ground disturbing activities (i.e., prior to the issuance of a Grading or Building Permit, whichever occurs first) unless an extension is

requested, in writing to the JPA, by the Project Proponent and granted to a date certain by the TAC, with the concurrence of the Permitting Agencies' TAC representative, based upon the following findings:

1. The time extension will not jeopardize the proper functioning of SJMSCP, and
2. The time extension will not adversely affect any SJMSCP Covered Species.

The TAC, with the concurrence of the Permitting Agencies' TAC representative, may impose conditions on the time extension as necessary to provide assurances to the JPA that the Project Proponent shall provide compensation pursuant to the SJMSCP consistent with the requirements of the SJMSCP.

If the 350-acre jump-start ceases to exist, then the provisions of paragraph B shall apply for all SJMSCP Permitted Activities, regardless of size and regardless of the compensation method selected (i.e., fees, land dedications in-lieu of fee payments, or purchase of mitigation banking credits).

Calculating Fees: Development Occurring After Plan Effective Date

For all new development occurring after the Effective Date of the SJMSCP, fees shall be calculated based upon the gross acreage of the proposed project.

For example, a 100-acre subdivision shall pay based upon a total of 100-acres. As necessary to address the impacts to habitats occurring due to Conversion of associated infrastructure and common areas, the total acreage shall be divided by the number of proposed residential lots and a per-lot fee shall be established. Therefore, a building permit issued for a home within a 100-acre subdivision, with 50 homes on Agricultural habitat land shall pay $\$1500 \times (100/50) = \$3,000$ per lot.

Calculating Fees: Development Occurring Prior to Plan Effective Date

For development occurring prior to the SJMSCP Effective Date which is subject to the SJMSCP, the fee calculation method shall be as follows. Because building permits are currently issued based on net acreage (the parcel size minus public streets, schools, parks, private open space) and the SJMSCP fee is based on gross acreage, a methodology for incorporating the Conversion of lands associated with infrastructure and common areas is required. In November, 1994, the City of Stockton undertook a study to establish a habitat/open space conservation fee. That study, "*Habitat/Open Space Conservation Fee Study*", prepared by: City of Stockton Community Development Department with the assistance of Steven B. Meyers, Special Counsel and Kathleen Faubion of Meyers, Nave, Riback, Silver & Wilson," is hereby incorporated by reference. Pages 17-19 and Exhibit 6 of that study establish how fees will be collected given that the open space fee is established based on gross acreages and building permits (when fees will normally be paid) are based on net acreage. The gross/net adjustments for Stockton's Habitat/Open Space Fee were determined by the City of Stockton based on a survey of actual development projects. This reconciliation of gross versus net acreages for fee collection purposes has been adopted by the SJMSCP and is summarized as follows:

Percentage of Gross Parcel Size Occupied by Streets and Other Public Facilities

Land Use Type	Net Parcel Area as a % of Gross Parcel Area
<i>Residential</i>	
Single-family residential	68.00
Multiple-family residential	76.00
Guestrooms	76.00
<i>Non-Residential</i>	
Office (high density)	82.00
Retail (medium density)	83.00
Industrial/Warehouse (low density)	93.00

SJMSCP Fees collected with a Building Permit which has not already been adjusted to reflect gross acreage, shall be collected based on the following adjustments to gross acreage. To simplify collections at the Building Permit counter, these calculations have been reduced to a single factor for each land use type, which factor may then be applied to the net parcel size shown on the building permit application as summarized in the following:

Rate to Apply to Net Parcel Size to Obtain Conservation Fee for Multi-Purpose Open Space Lands (\$750/Acre)

Land Use Type	Rate per sq. ft. of Net Parcel Area (Net Size < 1 Acre)	Rate per Acre of net Parcel Area (Net Size ≥ 1 Acre)
<i>Residential</i>		
Single-family residential	\$.025	\$1,103
Multiple-family residential	\$.023	\$987
Guestrooms	\$.023	\$987
<i>Non-Residential</i>		
Office (high density)	\$.021	\$915
Retail (medium density)	\$.021	\$904
Industrial/warehouse (low density)	\$.019	\$806

Sample Calculations (\$750/Acre):

Single-family home 5,000 sq. ft. (net parcel size) = \$125 fee
(.025 X 5,000 = \$125)

Single-family home, 1 acre net parcel size = \$1,103 fee
(\$1,103 X 1 = \$1,103)

Retail commercial, 20,000 sq. ft. (net parcel size) = \$420 fee
(.021 X 20,000 = \$420)

Retail commercial, 3 acres (net parcel size) = \$2,712 fee
(\$904 X 3 = \$2,712)

**Rate to Apply to Net Parcel Size to Obtain Conservation Fee for Natural Lands and Agricultural
Habitat Lands (\$1,500/Acre)**

Land Use Type	Rate per sq. ft. of Net Parcel Area (Net Size < 1 Acre)	Rate per Acre of net Parcel Area (Net Size ≥ 1 Acre)
<i>Residential</i>		
Single-family residential	.050	\$2,206
Multiple-family residential	.046	\$1,974
Guestrooms	.046	\$1,974
<i>Non-Residential</i>		
Office (high density)	.042	\$1,830
Retail (medium density)	.042	\$1,808
Industrial/warehouse (low density)	.038	\$1,612

Sample Calculations (\$1,500/Acre):

Single-family home 5,000 sq. ft. (net parcel size) = \$250 fee
(.050 X 5,000 = \$250)

Single-family home, 1 acre net parcel size = \$2,206 fee
(\$2,206 X 1 = \$2,206)

Retail commercial, 20,000 sq. ft. (net parcel size) = \$840 fee
(.042 X 20,000 = \$840)

Retail commercial, 3 acres (net parcel size) = \$5,424 fee

(\$1,808 X 3 = \$5,424)

F. Use of Conservation Fees

Fees collected through the conservation fee program may be used to acquire habitat lands in fee or in easement, to enhance habitat values, to administer the SJMSCP, and/or to operate and maintain habitat lands.¹³ These uses are consistent with the adopted general plans of the local jurisdictions (See Exhibit 1) and the SJMSCP, Chapter 5.

G. Guidelines for Use of Conservation Fees

Guidelines for the Acquisition, Preserve Design, Enhancement, Restoration, Management and Administration of the Plan are described, in detail, in SJMSCP Sections 5.3, 5.4, and 5.9.

H. Administration of Conservation Fee Program

The individual jurisdictions shall collect fees and deposit them in a separate Conservation Fee Account. No less frequently than quarterly, the jurisdictions shall transfer the Conservation Fee Funds into the SJMSCP Conservation Fee Fund of SJCOG, Inc., the SJMSCP Administrator.

¹³

Any of these uses - acquisition, enhancement, restoration, administration, maintenance, operation- is an appropriate use of conservation fees under this program. Use of a single term, such as acquisition or maintenance is for convenience only and does not preclude other habitat uses. Further, it is appropriate to use the conservation fee to maintain habitat in a manner usable by wildlife species notwithstanding Government Code Section 65913.8's prohibition against using impact fees for the "Maintenance or operation" of a public capital facility improvement." Habitat conservation areas do not appear to fall within the definition of "public capital facilities," at least so long as they are not being maintained for public use and so long as the maintenance is necessary to mitigate significant environmental impacts under CEQA. For examples of "public capital improvements" under other statutory provisions, see Government Code Section 6546; for examples of "public capital facilities" under other statutory provisions, see Government Code Section 53380.7. Both of these sets of examples include public parks as public capital improvements or facilities. Facilities such as public parks and playgrounds would not be included in conservation areas under the SJMSCP.

Exhibit 1

Description of Applicable General Plan Goals, Policies, Programs and other Local Regulations

SAN JOAQUIN COUNTY

San Joaquin County General Plan 2010 Volume 1: Policies/Implementation; Adopted by the San Joaquin County Board of Supervisors July 29, 1992, as amended

RECREATION

By 2010, an additional 4,000+ acres of regional parkland will be needed to serve County residents.

Objectives:

1. *To serve the recreation needs of the County population by providing regional and local parks and recreational facilities.*
2. *To protect the diverse resources upon which recreation is based, such as waterways, marsh lands, wildlife habitats, unique land and scenic features, and historical and cultural sites.*
3. *To ensure the preservation of the Delta and the opportunity for the public to learn about and enjoy this unique recreation resource.*
4. *To promote the recreational potential of San Joaquin County.*

Policies:

1. *San Joaquin County shall continue to be a major developer and operator of regional parks and shall facilitate the development and operation of local parks.*
2. *The criteria outlined in Table IV-5 shall be used for the development of parks (Regional parks 15-200 acres in size; nature-oriented outdoor recreation, picnicking, boating, fishing, camping, trail uses and play areas; within one hour drive time; 10 acres per 1,000 population).*
3. *Natural features shall be preserved in recreation areas, and opportunities to experience natural settings shall be provided.*
4. *The County shall protect those resource areas identified in figure IV-2 as being significant for recreation [Brovelli Woods; Mokelumne River; Oak Groves (northeast County); Potato Slough; White slough; Disappointment Slough; South Spud Island; Latham Slough; Connection Slough; Middle River; Trapper Slough; Stanislaus River; Salmon Slough].*
5. *It shall be recognized that the value of some public land may lie in the preservation of natural or historic features with limited or no public uses permitted on the site.*
6. *Areas for the following recreational opportunities should be provided along the County's waterways:*
 - a) *bank fishing;*
 - b) *boating;*
 - c) *water skiing;*
 - d) *hiking, bicycling, and horseback riding;*
 - e) *picnicking; and*

- f) nature study.*
- 7. *Recreational use of the County's waterways will be supported, and the County shall ensure adequate public access to waterways at selected locations.*
- 8. *The recreational values of the Delta, the Mokelumne River, and the Stanislaus River shall be protected.*
- 9. *The recreational potential, particularly for trails, of the Calaveras River, the San Joaquin River, the Stockton Diverting Canal, and water conveyor projects shall be recognized and studied. The potential for land use conflicts associated with public use of waterways (e.g. trespassing, littering, vandalism) should be assessed for selected recreation sites.*
- 10. *The Delta shall be recognized as an area of international importance and as a major recreational, wildlife, agricultural, and economic resource of San Joaquin County.*
- 11. *Waterway development and development of Delta islands shall protect the natural beauty, the fisheries, wildlife, riparian vegetation, and the navigability of the waterway.*

Implementation:

- 1. *Public land acquisition*
 - a) The County shall pursue the acquisition of conservation easements for preservation of riparian vegetation along the Mokelumne River, and study the feasibility of additional public recreational areas on the river.*
- 2. *Recreation activities. The County shall address the lack of the following recreational activities and provide for them:*
 - a) bank fishing;*
 - b) camping; and*
 - c) nature study.*
- 3. *Park funding. The County shall develop and adopt programs for funding local and regional parks.*

RESOURCES

Open Spaces

Objective:

1. *To preserve open space land for the continuation of commercial agricultural and productive uses, the enjoyment of scenic beauty and recreation, the protection and use of natural resources, and for protection from natural hazards.*

Policies:

1. *The open space resources in Table VI-1 shall be protected as indicated. (Waterways - water dependent uses only, riparian habitat - retention or replacement; riparian woodlands - no removal; wetlands - retention or replacement; significant oak groves - retention; habitat for threatened, rare or endangered species - protection of species; vernal pools - protection of resources; heritage trees - protection of resources; Lands to be retained in agriculture - agriculture and related uses only)*
2. *A Resource Conservation designation shall be used on the General Plan 2010 Map to protect significant resource areas and protect public safety.*
3. *Development may be permitted in Resource Conservation Areas only if proposed uses will not have significant negative impacts on the continued existence or use of the resource.*
4. *Areas with serious development constraints, such as the Delta, should be predominantly maintained as open spaces.*
5. *Open space areas shall be maintained between communities, as much as possible, to help preserve the identities of the communities.*
6. *The public should have opportunities to experience and appreciate open space resources.*
7. *Views of waterways, hilltops, and oak groves from public land and public roadways shall be protected.*
8. *Outstanding scenic vistas shall be preserved and public access provided to them whenever possible.*
9. *Development proposals along scenic routes shall not detract from visual and recreational experience.*

Implementation:

1. *Open Space Designations. The General Plan land use designations of Agriculture and Resource Conservation shall be used to protect open space resources.*

2. Resource Conservation Areas.

- a) *The General Plan 2010 Map shall designate as Resource Conservation those areas indicated as such in Table VI-1 (waterways, riparian habitat, significant vegetation, extractive resources)*
- b) *Discretionary permits shall be required for development in Resource Conservation Areas.*
- c) *Environmental Assessments for development proposals within Resource Conservation areas shall identify the sensitivity of resources and measures to protect the resources.*

3. Waterways Access. *The County shall seek to develop, in coordination with the Delta Advisory Planning Council, the State Wildlife Conservation Board, the agency with flood control responsibility and other local or regional agencies, trail systems and public access sites along the County's waterways, at selected locations.*

4. Acquisition of Open Space. *The County shall determine those planned open space areas in jeopardy and shall work for public acquisition of those areas.*

Agricultural Lands

Objectives:

1. *To protect agricultural lands needed for the continuation of commercial agricultural enterprises, small-scale farming operations and the preservation of open space.*
2. *To recognize agricultural lands that contain concentrations of small-scale agricultural operations and dwellings.*
3. *To minimize the impact on agriculture in the transition of agricultural areas to urban development.*

Implementation:

1. Mechanisms for Preservation of Agricultural Land.

- a) *The County shall support mechanisms for the preservation of agricultural lands, such as agricultural trusts.*
- b) *The County shall investigate the establishment of financial mechanisms to preserve agricultural lands.*
- c) *The County shall study the feasibility of establishing mitigation fees to be paid when lands are converted from agriculture and/or open space to an urban use. Such fees could be used for programs such as purchasing development rights or fee titles to property.*

Water Resources and Quality

Objectives:

1. *To ensure adequate quantity and quality of water resources for municipal and industrial uses, agriculture, recreation and fish and wildlife.*
2. *To recognize surface waters of San Joaquin County as resources of State and national significance for which environmental and scenic values must be protected.*

Policies:

1. *Substantial groundwater recharge areas, as shown in Figure VI-6, shall be kept in open space (flood areas along: the Stanislaus River, along the Mokelumne River, along portions of Dry Creek, in and around the confluence of the Calaveras River and Mormon Slough, and along portions of Duck Creek, Little Johns Creek, Corral Hollow Creek, Lone Tree Creek and Hospital Creek)*
2. *Water projects shall:*
 - a) *incorporate safeguards for fish and wildlife; and*
 - b) *mitigation erosion and seepage to adjacent lands.*
3. *Water diversions projects shall protect the fishery, wildlife habitat, and recreation; shall ensure adequate water for County agricultural, municipal and industrial uses; and shall guarantee adequate Delta outflows for salinity repulsion.*

Implementation:

1. *Water Quality Maintenance.*
 - a) *The County shall continue to support State and federal programs for improving and maintaining water quality.*

Vegetation, Fish and Wildlife Habitat

Objectives:

1. *To protect and improve the County's vegetation, fish and wildlife resources.*
2. *To provide undeveloped open space for nature study, protection of endangered species, and preservation of wildlife habitat.*

Policies:

Resource Protection and Management

1. *Resources of significant biological and ecological importance in San Joaquin County shall be protected. These include wetlands; riparian areas; rare, threatened and endangered species and their habitats as well as potentially rare or commercially important species; vernal pools; significant oak groves and heritage trees (see Table VI-1).*

2. *No public action shall significantly diminish the wildlife and vegetative resources of the County; cumulatively significant impacts shall be avoided.*
3. *The County shall encourage protection of those habitat areas that are of a size or quality so that they are no more than minimally affected by adjacent development. Connection of habitat areas shall be encouraged.*
4. *Development in the vicinity of significant oak groves shall be designed and sited to maximize the long-term preservation of the trees and the integrity of their natural setting.*
5. *No net loss of riparian or wetland habitat or values shall be caused by development.*
6. *Development projects which have the potential to destroy wetlands shall not be permitted, unless:*
 - a) *No suitable alternative site exists for the land use, and the use is considered necessary to the public;*
 - b) *there is no degradation of the habitat or numbers of any rare, threatened, or endangered plant, or animal species as a result of the project; and*
 - c) *habitat of superior quantity and superior or comparable quality will be created or restored to compensate for the loss.*
7. *The County shall support feeding areas and winter habitat for migratory waterfowl.*
8. *Strips of land along waterways shall be protected for nesting and foraging habitat and for protection of waterway quality.*
9. *Boater-recreational use in the Delta should not disturb wildlife or vegetation or weaken levees.*
10. *Use of the Delta channel islands for levee materials or deposition of dredge spoils shall be strongly discouraged.*
11. *Fisheries shall be protected by:*
 - a) *reducing the level of pesticides and fertilizers and other harmful substances in agricultural and urban runoff;*
 - b) *designing and timing waterway projects to protect fish populations; and*
 - c) *operating water projects to provide adequate flows for spawning of anadromous fish.*
12. *The County shall support restoration plans for anadromous fisheries and shall work with the California Department of Fish and Game and other agencies or organizations in developing such plans.*
13. *The County shall encourage the restoration and enhancement of once-productive degraded ecosystems, such as historic salmon runs on the Mokelumne and Calaveras Rivers.*
14. *The County shall support the establishment and maintenance of ecological preserves and accessibility to areas for nature study.*

15. *Replacement vegetation generally shall be native vegetation. Landscaping with native trees and shrubs shall be encouraged in urban areas to provide suitable habitat for native wildlife, particularly in proposed open space uses of future development.*
16. *Habitat that is required to be protected, restored, or created as mitigation for a project's impacts shall be monitored and maintained in accord with a County-approved program.*

Implementation:

1. Natural Diversity Database. *The Natural Diversity Database shall be used to determine location of significant species for environmental assessment of projects.*
2. Species Protection. *The County shall:*
 - a) *prepare and adopt regulations to protect special status taxa;*
 - b) *address protection and preservation of special status taxa in review of development applications; and*
 - c) *work with the California Department of Fish and Game to develop methods to save listed species such as the Swainson's hawk.*
3. Habitat Protection, Preservation and Restoration Program.
 - a) *The County shall develop and implement, with the California Department of Fish and Game, a program to protect, restore and manage wildlife and habitat resources. The project shall include establishment of financing by project mitigation funds.*
 - b) *The County shall support habitat conservation and restoration plans for special-status taxa and shall work with the California Department of Fish and Game and other agencies or organizations in developing such plans.*
 - c) *The County shall develop an integrated vegetation management program for County-owned and maintained properties which will serve to reduce the extent of long-term maintenance, reduce the need for pesticide applications, and enhance the wildlife habitat value of these areas.*
 - d) *The County shall educate and encourage farmers and other landowners to preserve and enhance natural vegetation in and adjacent to cultivated areas.*
 - e) *In the Delta region of the County, the County shall encourage management practices that will preserve and enhance the wildlife habitat value of the area. These include:*
 - (i) *planting of corn, milo, wheat, and other grain crops with a high wildlife value;*
 - (ii) *management and harvest techniques that leave some waste grain and stubble of unharvested strips or patches in fields;*
 - (iii) *experimental planting and flooding to maximize waterfowl use at selected locations in the Delta area; and*

- (iv) *establishment and long-term maintenance of hedgerows along field edges, irrigation channels, and on the outboard side of levees in the Delta region, consistent with the recommended integrated vegetation management program.*
- f) *The County shall study locations for ecological preserves and reserves.*
- 4. *Wetlands and Riparian Habitat.* *The County shall protect and restore wetlands habitat and riparian habitat by:*
 - a) *assessing potential project impacts on the resources;*
 - b) *requiring project proponents to mitigate impacts and fund habitat restoration and post-project monitoring;*
 - c) *preparing and adopting wetlands regulations;*
 - d) *prohibiting the use of rip-rap above the high water line; and*
 - e) *supporting independent ongoing projects by the Department of Fish and Game or other agencies to create or restore wetlands and riparian habitat and establish jurisdictional control for project monitoring.*
- 5. *Natural Area Acquisition.* *The County shall support the protection of valuable ecological lands by:*
 - a) *acquiring conservation easements along the Mokelumne River;*
 - b) *supporting conservation easements at Brovelli Woods;*
 - c) *supporting acquisition and development of lands for wildlife and habitat protection and enhancement;*
 - d) *encouraging the involvement of private land trust such as The Nature Conservancy;*
 - e) *supporting a State study of mitigation banking for habitat; and*
 - f) *seeking State acquisition of ecological reserves.*
- 6. *Water Quality Improvement.* *The County, in coordination with the U.S. Fish and Wildlife Service and the California Department of Fish and Game, shall develop a program to significantly reduce pesticide use.*
- 7. *In-stream Fish Protection.* *The County shall promote efforts to determine required flow levels and other stream characteristics (e.g., temperature) to support fish life in waterways which flow through San Joaquin County.*
- 8. *Project Referral to Environmental Organizations.* *The County shall encourage review and comments from private resource and conservation organizations, particularly for projects which could affect the County's biotic resources.*
- 9. *Ecological Information Programs.* *The County shall support programs that encourage and teach respect for the environment.*

GROWTH ACCOMMODATION

Objectives:

1. *To minimize the effects on agricultural lands and other environmental resources while providing for orderly growth.*
2. *To protect the public, existing planned land uses, and the environment from natural and development hazards.*

Policies:

1. *Development shall minimize impacts on the County's resources.*

INTERJURISDICTIONAL COORDINATION

Policies:

1. *In coordinating with other jurisdictions, the County shall promote the policies of the General Plan, including the planned types and densities of development, the provision of public services and facilities, the protection of public safety, and the conservation of agricultural land and other resources.*

Implementation:

3. *Management of Regional Environmental Resources.*
 - (a) *The County shall continue to participate in programs or regional bodies established to manage the use and protection of significant regional resources.*
 - (b) *The County shall establish additional programs or regional bodies as necessary to address the managed use and protection of regional resources in such areas as water quality, aquifer protection, development of regional trail systems, air quality, and the operation of regional facilities.*

SEISMIC AND GEOLOGICAL HAZARDS

Implementation:

1. Open Space. *The following areas of the County shall be planned for open space to limit the exposure of people and structures to hazards:*
 - (a) *The Delta islands, because of subsidence and potential flooding from levee failure.*

FLOOD HAZARDS

Policies:

1. *In designated floodways, uses shall be restricted to those that are tolerant of occasional flooding, such as agriculture, outdoor recreation, extraction, and natural resource areas.*

**MITIGATION MONITORING PROGRAM ADOPTED PER THE GENERAL PLAN FINAL EIR BY
THE SAN JOAQUIN COUNTY BOARD OF SUPERVISORS JULY 29, 1992:**

- 4.4.3(c) *For Mountain House and New Jerusalem] detailed streambed modification design and riparian vegetation proposals shall be prepared at the Specific Plan stage and shall be subject to approval by the County and CDFG.*
- 4.16.1(g) *Natural waterways, man-made channels, and other physical barriers (such as road grades, major roads, etc.) should be used as separations between future urban and agricultural or open space land use wherever possible. These features would serve to separate the two uses, minimizing the potential for disturbance of wildlife using non-urban habitat and serving as obstacles to prevent possible development applications situated outside the limits of future growth in the Plan.*
- 4.16.2(c) *During the preparation of the development regulations for special status species, the following items shall be considered:*
- *The intent of the chapter shall be to protect populations and critical habitat for special status taxa.*
 - *Appropriate sections for inclusion in the chapter include: review for the potential occurrence of taxa of concern; conducting of detailed field surveys if determined necessary; consultation with representatives of jurisdictional agencies; and development constraints of applicable fees for loss of suitable habitat.*
- 4.16.2(d) *The land use plans for the new communities shall be modified as necessary to protect identified populations and critical habitat for special status taxa. To some degree, this may depend on the outcome of further necessary biological studies to determine whether taxa of concern are present or the extent of occurrence within a particular community area. Confirmation of the presence or absence of taxa of concern listed in Table 4.16.2 shall be provided for each new community, particularly for fish, wintering birds, amphibians, and invertebrate taxa. Preliminary modifications to the land use plans shall include the following:*

Mountain House New Community

[Specific Plan already adopted.]

New Jerusalem New Community

Agricultural and open space protection areas shall be established as part of the proposed land use plan to preserve foraging habitat for Swainson's hawk, consistent with guidelines established by the CDFG or as provided by the countywide habitat conservation plan once finalized.

4.16.3(g) *The County should complete a countywide biological survey to identify favorable sites for future ecological reserves. The County should redesignate the ecological reserve areas as Open Space/Resource Conservation of the Draft Plan 2010 Map. Identified areas suitable as reserves could serve as the possible "mitigation banking" sites where future development projects could contribute to the purchase and maintenance of selected reserves through contribution to a conservation impact fee.*

4.16.3(h) *The land use plans for the new communities shall be modified as necessary at the Specific Plan stage to protect sensitive natural communities and other important biotic resources. Preliminary modifications to the land use plans shall include the following:*

Mountain House New Community

[Specific Plan already adopted.]

New Jerusalem New Community

[No preliminary modifications recommended.]

ESCALON

CONSERVATION AND OPEN SPACE

GOAL: *To ensure that future growth of Escalon occurs in a manner which minimizes adverse impacts on the City's open space and natural resources.*

Policies:

- 3.210 Conserve, to the greatest feasible extent, the City's existing natural resources, with particular emphasis on air and water quality, open space, farmland, wildlife and habitat preservation.*
- 3.220. Ensure that all adverse environmental impacts of proposed development projects are identified and acceptably mitigated prior to approval.*
- 3.230. Maximize farmland open space and wildlife habitat preservation on lands outside of the City by establishing a greenbelt including all lands not designated for future annexation on the General Plan Land Use Diagram.*

Implementation Programs:

- 3.360 Designate a sufficient amount of suitable foraging area, connect to regional migratory corridors, as open space for natural resources for the purpose of conserving Swainson's hawk habitat.*

NOTE: This program was implemented in 1994, per the Escalon Planning Department, with the designation of an open space area on the Escalon General Plan Land Use Diagram located west of Escalon-Bellota Road and east of Brennan Road and north of State Route 120, extending to the northern City boundary of the City of Escalon.

LATHROP

Source: Comprehensive General Plan & Environmental Impact Report for the City of Lathrop, California. Adopted by the Lathrop City Council; December 17, 1991. Prepared by Grunwald & Associates December, 1991.

VEGETATION, FISH AND WILDLIFE POLICIES:

The following policies seek not only the retention of virtually all beneficial habitat which now exists, but also to enhance habitat which has been degraded and to create new habitat where feasible.

1. *The objective of habitat retention calls for:*

- *The integration of waterway habitats as part of the areawide system of open space.*
- *The preservation of all stands of vegetation along waterways which provide habitat, and achieving a standard of "no net loss of wetland acreage".*
- *The careful introduction of public and private recreation activities within habitat areas which will not disturb natural conditions either through intensity of operations, high levels of noise generation, or scarring of the landscape through development activity.*
- *The retention of hedgerows and other habitat areas within intensively farmed acreage which are compatible with agricultural operations.*
- *The protection of fisheries by preventing discharge of contaminated surface water to waterways.*

2. *The objective of habitat enhancement calls for:*

- *The improvement of natural habitat along waterways.*
- *The creation of new habitat within multi-purpose open space area designated for reuse of treated wastewater for wildlife management and recreation.*
- *Cooperative approaches among landowners to manage farmlands so as to increase the numbers of desirable species of wildlife.*

3. *The City shall on its own, or in participation with other local governments, prepare and implement a Habitat Conservation Plan (HCP) for the Swainson's hawk. The acquisition of lands required as replacement habitat for nesting and foraging is to be funded by fees imposed upon developers whose land development activities would threaten, endanger or eliminate existing habitat within the Lathrop planning area. The HCP shall be based upon a current habitat field survey taken during the Swainson's hawk nesting season to determine whether Core Conservation Areas or only foraging habitat exists.*

It is the intent of the City of Lathrop to be a good steward of its biological resources for the benefit of its citizens and the general public. The General Plan EIR acknowledges that significant impacts would occur to Swainson's hawks, and potentially significant impacts could occur to other species. Mitigation measures are provided in the General Plan EIR to mitigate the impacts. The purpose of the following information is to clarify the proposed mitigation as a matter of General Plan policy.

- a. *A mitigation concept is presented on page 8-D-8 which states that the City should adopt its own HCP, or possibly participate in the plan being prepared by the City of Stockton. The City intends to prepare an HCP, in cooperation with other jurisdictions that would mutually benefit from Lathrop's HCP. Information and data from Stockton's HCP will be used to the extent appropriate.*
- b. *Lathrop's HCP will be completed prior to the City allowing specific project EIR's to be completed for projects proposed west of Interstate 5. This will ensure that the necessary mitigation plans and agreements with the State Department of Fish and Game (DFG) are in place for protection of Swainson's hawks. The HCP process will commence as soon as reasonably possible after General Plan adoption, involving close cooperation with DFG. It is recognized that foraging habitat is one of*

the most important elements required for preservation of Swainson's hawks.

4. *Developments proposed in sensitive biological areas shall be required to provide a site specific analysis of the impacts of the project on fish and wildlife habitat. Because of the large-scale character of development proposed in the vicinity of biologically sensitive environments, including the conversion of several thousand acres of agricultural land to urban use, project proposals should be made to address ways in which new or enhanced habitat may be created as a trade-off to the general environmental impacts on biological resources associated with development under the General Plan.*
5. *Land use within areas of riparian habitat shall be restricted to nature-oriented passive recreation, including such uses as arboretum, zoological gardens, hiking and nature study. Structures which would reduce the amount of area available for water detention should be prohibited within the Paradise Cut flood plain.*
6. *A naturally landscaped corridor shall be provided along the entire perimeter of Gold Rush City and of SPA #2 which lies west of Interstate 5. This corridor should be wide enough to serve as a major component of the recreation and open space system, and should provide for a system of pedestrian, bicycle and equestrian trails. This corridor will also assure public access to the San Joaquin River as required by State policy and law.*
7. *The visual amenities of water and its potential as wildlife habitat are to be reflected where feasible in all developments by the inclusion of bodies of water as components of urban form. Such bodies of water may be in the form of lakes, ponds, lagoons, simulated streams or similar features which can be integrated by design within recreation open space corridors parks, commercial and residential areas and public sites. The multi-purpose use of water bodies for surface water drainage, flood control, wastewater reclamation, wildlife management, recreation and visual amenity is encouraged.*

EIR - BIOLOGICAL RESOURCES

Fish and Wildlife

Impacts:

1. *The principal impact on the Swainson's Hawk will be the loss of foraging and nesting habitat, the consequent abandonment of nesting territories, and relocation of the hawk to other suitable habitat if available. (Significant).*
2. *If suitable nesting territories are not available to support relocation in relation to other Swainson's hawk territories, then there could result a net loss in the hawk population which would further exacerbate the condition of the hawk as a threatened species. (Significant).*
3. *There is the possibility that other species of rare, endangered or threatened species of wildlife exist within the Planning Area, which were not observed during field surveys conducted in February/April, 1991. (Potentially significant)*
4. *Agricultural operations located within, as well as west and south of the Lathrop planning area can adversely impact rare, threatened or endangered species through the removal of crops that provide foraging habitat, by damage to native vegetation due to soil erosion or sedimentation, and pesticide applications that could impact specific species.*
5. *The fishery of the San Joaquin River and its tributaries is threatened by the potential for contamination by urban runoff and up-stream agricultural drainage.*

Mitigation Measures:

1. *For the City to be able to adopt and implement a General Plan proposing urbanization within close proximity of known Swainson's hawk nesting sites, it will be necessary for the City to adopt its own Habitat Conservation Plan (HCP), or possible to participate in the HCP for Swainson's hawks being considered by the City of*

Stockton. Other jurisdictions are also considering participation with Stockton, including Lodi, Tracy and the County of San Joaquin. This approach can allow for reasonable urban expansion while retaining the Swainson's hawk populations in perpetuity.

The concept of a Habitat Conservation Plan is derived from Federal Law and is a required planning document when any activity may result from the incidental "take" of a state listed species.¹⁴ Although the Swainson's Hawk is not federally listed, the California Department of Fish and Game (DFG) can interpret the California Endangered Species Act (CESA) to allow a predetermined amount of "take" of state listed species (supported by the HCP) by entering into an agreement with the local governments involved.¹⁵ The use of an HCP is a planning process that allows for wildlife management and conservation while considering the economic and social values of regional development. It is a vehicle by which the conflicts between conservation and development can be ameliorated. It has the further advantage of establishing a fund to purchase, enhance or manage Swainson's hawk habitats lost to development by assessing fees from developers that will spread the cost of mitigation over a wider economic base. An HCP would provide a clear direction and understanding of the development policy regarding the impacts on a sensitive species and would facilitate a smoother permitting process.

2. *Habitat replacement is a mitigation option that can be considered, but there are biological limits to how and where replacement can be adequately applied. The Stewart Tract, along with lands to the north and west, incorporates habitat for what is called the South Delta subpopulation of the Swainson's hawk which is bounded by the San Joaquin River to the east, Old River to the west, Lower Roberts Island to the north and the City of Tracy to the South.*

If habitat replacement is to be considered, the areas selected as mitigation sites should be located within the boundaries of the South Delta subpopulation. If land is purchased, or brought into an easement agreement as replacement for impacted areas within the Lathrop planning area, the quality of the habitat should be considered as well as its location. It should include suitable nesting habitat (Estep 1989) and, if agricultural land is being considered, it should be a crop type that Swainson's Hawks will utilize, such as alfalfa.

3. *Policies of the Resource Management Element call for habitat retention and habitat enhancement to deal with known and as yet unknown sensitive species of plants and animals. Additional biological field surveys will be required as part of the Specific Plan preparation process to determine whether any other sensitive species are present.*
4. *A biological study shall be required for any development project that is determined to have a potential impact upon rare, threatened or endangered species.*
5. *The City shall aid in the protection of fisheries by reducing the amount of pesticides and fertilizers contained in urban runoff, and by requiring the design of waterway projects to protect fish populations.*

Riparian Vegetation, Wetlands and Watercourses

Impacts and Mitigation Measures:

There is a potential for damage to existing riparian vegetation, wetlands and watercourses due to urban development. General Plan policies call for the protection of all existing riparian vegetation, wetlands and watercourses. Policies of the Resource Management Element serve as mitigation measures by calling for their preservation and enhancement. Other mitigation measures include:

-
4. *Section 10[a][2][A] of the Federal Endangered Species Act.*
 5. *Fish and Game Code Section 2081*

1. *Development projects shall not be permitted which would have the potential for destroying wetlands or marshlands unless a comparable or superior quantity and quality of habitat is provided to compensate for the loss.*
2. *In addition, the on-going mitigation monitoring program shall provide for the monitoring of habitat restoration and enhancement projects to assure the potential for project success.*

LODI

Source: City of Lodi General Plan Policy Document, Prepared for the City of Lodi by Jones and Stokes Associates, Inc., December, 1989.

LAND USE AND GROWTH MANAGEMENT

Goal B:

To preserve agricultural land surrounding Lodi and to discourage premature development of agricultural land with nonagricultural uses, while providing for urban needs.

Policies:

1. *The City shall encourage the preservation of agricultural land surrounding the City.*

CONSERVATION ELEMENT

Goal A:

To protect water quality in the Mokelumne River, Lodi Lake and in the area's groundwater basin.

Policies:

1. *The City, together with the County, shall monitor the water quality of the Mokelumne River and Lodi Lake to determine when the coliform bacterial standard for contact recreation and maximum concentration levels of priority pollutants, established by the California Department of Health Services, are exceeded. The City shall also monitor the presence of pollutants and variables that could cause harm to fish, wildlife, and plant species in the Mokelumne River and Lodi Lake.*

Goal E:

To protect sensitive native vegetation and wildlife habitats and fisheries resources.

Policies:

1. *The City shall protect the river channel, pond and marsh, and riparian vegetation and natural communities and habitats in the Mokelumne River and floodplain areas.*
2. *The City shall require site-specific surveys to identify significant vegetation and wildlife habitat for development projects located in or near sensitive habitat areas.*
3. *The City shall support federal and state laws and policies preserving rare, threatened and endangered species by ensuring that development does not adversely affect such species or by fully mitigating adverse effects consistent with the recommendations of the U.S. Fish and Wildlife Service and the California Department of Fish and Game.*
4. *The City shall prohibit the development of facilities and trails in Lodi Lake Park that will degrade or destroy riparian habitat values.*

5. *The City shall direct park use away from sensitive habitat areas through careful placement of facilities and trails in Lodi Lake Park.*
6. *The City shall explore the purchase or establishment of a joint agreement for open space preservation and habitat enhancement in the Woodbridge Irrigation District's property located north of the Mokelumne River.*
7. *The City shall prohibit activities that could disturb anadromous fish in the Mokelumne River during periods of migration and spawning.*
8. *The City should work with the California Department of Fish and Game in identifying an area or areas suitable for Swainson's hawk and burrowing owl habitat; this land should be preserved and put into a mitigation land bank to mitigate impacts on existing habitat for these species. A mechanism should be established for developer funding of acquisition and management of lands in the mitigation bank.*
9. *The City shall manage portions of storm water drainage detention ponds and drainage ponds and other appropriate areas as wildlife habitat.*

PARKS, RECREATION AND OPEN SPACE

Goal A:

To establish and maintain a public park system suited to enhancing the livability of the urban environment by meeting the open space and recreation needs of Lodi residents and visitors; providing parks for residential neighborhoods; and preserving significant open space resources.

Policies:

1. *The City shall establish a standard of 8.0 acres of neighborhood and community parkland per 1,000 population, including school parks and storm drainage detention basin parks, and 4.2 acres of neighborhood and community parkland per 1,000 population excluding school parks and storm drainage detention basin parks. The City shall translate this ratio to dwelling unit equivalents to correspond to the City's fee ordinance.*
2. *The City shall assess a park development fee on all new residential, commercial, office, and industrial development sufficient to fund the acquisition and development of new parkland consistent with the City standards identified in the policy above.*
3. *The City shall actively pursue available county, state and federal funding for the acquisition of parkland and the development and improvement of park facilities.*
4. *The City shall preserve and protect significant open space areas and natural habitat areas within Lodi Lake Park and other City parks.*
5. *The City shall consider the establishment of a parkway corridor along the north side of the Mokelumne River with the objectives of providing additional recreational opportunities for Lodi residents, protecting sensitive habitat along the river, and providing additional public access to the river.*

City of Lodi General Plan Final Environmental Impact Report prepared for the City of Lodi by Jones and Stokes Associates, April 1991.

BIOLOGICAL RESOURCES

Impact:

Loss of foraging, roosting, and potential nesting habitat for the Swainson's hawk and the burrowing owl.

Mitigation Measure:

The City should formulate procedures for developers to follow to determine whether their projects involve the "take" of burrowing owls or other raptors or their nests, and to obtain a DFG permit for taking or destroying the nests or eggs of raptors (Fish and Game Code Section 3503.5). (Status: To be adopted as a mitigation measure).

MANTECA

Source: Manteca General Plan, Policy Document; Adopted May 2, 1988

NATURAL RESOURCES

Goal B:

To promote the continuation of agricultural uses in the Manteca area and to discourage the premature conversion of agricultural land to nonagricultural uses, while providing for the urban development needs of Manteca.

Goal C:

To protect sensitive native vegetation and wildlife communities and habitat in the Manteca area.

Policies:

1. *The City shall attempt to ensure in approving new development that its impact on native vegetation and wildlife will be minimized.*
2. *New development in the vicinity of the San Joaquin River shall be conditioned to promote and protect riparian, wetlands, and other native vegetation and wildlife communities and habitats.*

Report 1 General Plan Amendment 93-1 for South Manteca and Report 2 Final Area Plan for South Manteca/Adopted by the City of Manteca December 20, 1993; Prepared by WPM Planning Team, Inc.

AGRICULTURE

Goal 6B:

To minimize the effect on agricultural lands in South Manteca, while providing for orderly growth.

Policies - Agricultural Resources:

- 6B.5 *Encourage the donation of agricultural easements on lands designated for agriculture.*

VEGETATION AND WILDLIFE

Goal 6C:

Protect Sensitive Native vegetation and wildlife communities and habitat in South Manteca

Policies - Vegetation and Wildlife:

- 6C.1 *Minimize impact of new development on native vegetation and wildlife.*
- 6C.2 *Condition new development in the vicinity of the San Joaquin River and Walthall Slough to promote and protect riparian habitat, wetlands, and other native vegetation and wildlife community.*

Report 3: Volume 1 Final Environmental Impact Report Draft EIR with Revisions for South Manteca Area Plan/General Plan Amendment; Prepared by the WPM Planning Team, Inc., December, 1993.

NATURAL RESOURCES - VEGETATION AND WILDLIFE

Impact 6.2B

Swainson's Hawk. Approximately 1,920 acres of foraging habitat would be lost. (Significant)

Mitigation 6.2-1

Preserve significant agriculture buffer area between the western border of the site and the actual development. Consult with CDFG, Region 2 concerning precise details of mitigation requirements. (Less than significant after mitigation)

Impact 6.2C

Cooper's Hawk. Approximately 1,350 acres of Cooper's hawk foraging and breeding habitat would be lost. (Significant)

Mitigation 6.2-2

Preserve an adequate orchard buffer between the southern project site boarder and the development area in the eastern half of the site. Enhance this area for birds by planting seed and fruit-producing hedge rows. (Less than significant after mitigation)

Impact 6.2D

Northern Harrier. Foraging habitat would be lost. (Significant)

Mitigation 6.2-1

Mitigation for Swainson's hawk would apply (see 6.2-1). (Less than significant after mitigation)

Impact 6.2E

California Tiger Salamander. The breeding pond and summer retreat site of this species may be altered or destroyed. (Significant)

Mitigation 6.2-3

Preserve or mitigate any loss of McKinley Road pond area. (Less than significant after mitigation)

Impact 6.2F

Northwestern Pond Turtle. Nesting and feeding site along Walthall Slough could be impacted by development adjacent to the Slough shoreline. (Significant)

Mitigation 6.2-4

Adhere to CDFG 100' buffer zone requirement for permanent wetlands. (Less than significant after mitigation)

Impact 6.2G

Freshwater Wetland Habitats. Proposed development may impact wetlands. (Significant)

Mitigation 6.2-5

Provide protection or mitigation for jurisdictional wetlands in keeping with state and federal standards. (Less

than significant after mitigation)

Impact 6.2H

Riparian Habitat. *Proposed land uses could affect existing habitat.*

Mitigation 6.2-4

(See Impact 6.2F)

Mitigation 6.2-6

Implement Area Plan policies and programs to protect riparian habitat. (Less than significant after mitigation)

Impact 6.2I

General Loss of Wildlife Habitat *(Significant Unavoidable)*

Mitigation 6.2-7

Area Plan policies would reduce impacts. (Significant Unavoidable)

CUMULATIVE IMPACTS

10.2B

Conversion of Agricultural Land. *(Cumulative, Significant Unavoidable).*

Mitigation 10.2-1

The City should seek to conserve prime farmland thorough a farmland protection program. (Cumulative, Significant Unavoidable).

10.6C

Vegetation and Wildlife. *General Plan buildout will reduce habitat forage areas for the Swainson's hawk and other special status raptors. (Significant or potentially significant and Cumulative)*

Mitigation 10.6-2

Participate in Habitat Management Plan or equivalent effort to preserve habitat. (Significant or potentially significant and Cumulative)

RIPON

Source: General Plan, City of Ripon, Adopted September 20, 1988 and Draft General Plan, City of Ripon, 1996.

OPEN SPACE AND CONSERVATION ELEMENT

Goal A:

To provide and maintain parks that are suited to the needs of Ripon residents and visitors.

Policies:

1. *City park dedication (or acquisition) and development efforts will be based on a goal of 3 to 5 acres of neighborhood and community parkland per 60 to 80 acres residential or 1,000 residents. This goal is separate and exclusive of school site acreage within the City limits.*
2. *The City will pursue State and County funding to augment City revenue to the extent such funding is available.*
3. *The City will continue to impose park development fees on all new residential development.*
4. *The City will promote and encourage the preservation of open space areas along the Stanislaus River and maximize its potential for public enjoyment.*

GOAL G:

Preserve the riparian area along the Stanislaus River for recreational uses.

Policies:

1. *Prohibit all development within the riparian area along the Stanislaus River, except recreational uses where the City has acquired land or an easement, as long as the uses do not interfere with capacity of the river during floods.*
2. *Recognize the special resources Ripon has in underdeveloped river frontage and draft a plan for public enjoyment and preservation of the natural environment.*

City of Ripon General Plan Final Environmental Impact Report, prepared by J. Laurence Mintier & Associates Planning Consultants, Certified September 20, 1988. NOTE: The EIR for the 1996/97 General Plan Update was pending at publication of the SJMSCP and should be incorporated, as needed, to revise the following:

VEGETATION AND WILDLIFE

Impacts and Mitigation Measures:

Buildout under the General Plan would reduce the existing vegetation and wildlife resources in presently undeveloped areas. Conversions of agricultural lands would diminish habitat for pheasants, quail, doves and rabbits.

The potential for adverse impacts is greatest along the riparian habitat along the Stanislaus River. Restriction of development within the floodplain will afford continued protection of sensitive habitats. Specific development projects should be assessed for impacts on wildlife and vegetation and include appropriate mitigation measures.

The General Plan includes the following policies to mitigate potentially adverse impacts of new development on vegetation and wildlife:

5.D.1 To minimize the intrusion of urban development into agricultural areas, the City will discourage the premature conversion of agricultural lands to urban uses.

5.D.2 Continue to prohibit urban building within floodplain areas except by special permit.

STOCKTON

Source: City of Stockton General Plan Policy Document, Adopted January 22, 1990, Last Amended May 20, 1996; City of Stockton General Plan Parks and Recreation Element Evaluation and Update, January 8, 1996

GENERAL OBJECTIVES:

1. *Maintain a balance between advancing economic opportunities of all citizens and protection of the natural environment.*
2. *Coordinate Stockton's plans, policies and programs with those of San Joaquin County and other public and private agencies to assure maximum benefit from cooperative action.*

LAND USE

Goal 4:

Promote and maintain environmental quality and the preservation of agricultural land while promoting logical and efficient urban growth

Policies:

1. *Environmentally sensitive areas, such as the Delta, Oak Groves and areas of archaeological/historic value, should be preserved for the benefit of present and future generations.*

PARKS AND RECREATION

Goal 1:

To provide a variety of recreational facilities and services to meet the diverse needs of Stockton's residents, workers and visitors.

Policies:

1. *The City shall ensure that park and recreation facilities are provided at a level that meets the City's park and recreation standards, as shown in the following table.*

PARK STANDARDS			
Type of Park	Acres/1,000 Residents	Acres/Park	Service Radius
<i>Neighborhood Park</i>	<i>0.75</i>	<i>5 to 10</i>	<i>2 mile</i>
<i>Community Park</i>	<i>2.25</i>	<i>10 to 30</i>	<i>1 mile to citywide</i>
<i>Regional Park</i>	<i>7.00</i>	<i>30+</i>	<i>Region-wide</i>
<i>Golf Courses</i>	<i>1 course/40,000</i>	<i>130-180</i>	<i>Region-wide</i>

2. *The City shall continue to provide for the development of linear parkways, recreational bikeways and trails that connect with the community and neighborhood parks where opportunities exist (i.e. Calaveras River path, EBMUD right-of-way).*
3. *The City shall continue to cooperate with San Joaquin County and local school districts to provide a wide variety of recreational opportunities for Stockton residents and visitors.*
4. *The City shall encourage the development of private open-space and recreational facilities in larger residential developments in order to meet a portion of the open space and recreation needs generated by the residents of those developments.*
5. *In cooperation with the County, the City shall consider acquiring additional land for regional park purposes.*
6. *The City shall endeavor to preserve and restore the natural values of the San Joaquin and Calaveras Rivers, the Delta, and other local waterways, and shall incorporate them into the City's park and trail system where possible.*

NATURAL AND CULTURAL RESOURCES:

CONSERVATION

Goal 1:

Guide Urban development toward vacant or under-used land within the urbanized area and direct new growth toward contiguous lands to protect agricultural lands and other open spaces used for the managed production of resources from premature urban development.

Policies:

1. *Existing agricultural soils capable of producing a wide variety of valuable crops shall be retained in agricultural use until the time that such soils are needed for logical urban expansion.*
2. *Support firm policies and ordinances by San Joaquin County to protect productive agricultural land.*
3. *Consider the establishment of a land trust to acquire or otherwise provide for the long-term preservation of open space lands for (1) agricultural use and other managed production of resources and/or (2) for preservation of natural resources.*
4. *Consider establishing buffers, such as setbacks, berms, greenbelts and open space areas, to separate farmland*

from urban uses.

Goal 2:

Permit the profitable utilization of mineral resources while protecting the environment and surrounding land uses from any adverse effects of extraction operations.

Policies:

1. *Requests for extractive operations (i.e. gas wells) shall consider the effects on the surrounding land uses and on the natural environment.*

OPEN SPACE:

Goal 1:

Preserve and enhance open space areas for the preservation of natural resources including plant life, habitat for fish and wildlife species, ecologically sensitive areas, and historic and cultural resources.

Policies:

1. *The Delta and related waterways shall be used only for activities which are consistent with the sensitive environmental characteristics of this area. Any disturbance of levee vegetation should be minimized and replaced consistent with flood control and reclamation district constraints.*
2. *Urban development adjacent to the Delta and related waterways should give special consideration to the natural hazards in this area (i.e. flooding, soil subsidence, peat fires) and shall be required to provide access to and along this resource consistent with public safety and the preservation of sensitive biological resources.*
3. *The fisheries and riparian habitat of the Delta and waterways shall be protected from any damage caused as a result of the operation of marinas or the Port of Stockton.*
4. *Significant wildlife and natural vegetation areas shall be protected and preserved for environmental, educational and research purposes.*
5. *Seek to preserve existing Valley Oak trees which are healthy.*

Goal 2:

Provide and maintain open space resources for outdoor recreation within the urban fabric of Stockton.

Policies:

1. *Utilize open space areas to provide community and neighborhood identity and to insulate conflicting land uses and noise generators.*
2. *Residential developments shall be encouraged to provide private open space areas.*

Goal 3:

Retain in open space use any lands too hazardous for development to promote public health and safety.

Policy:

1. *Areas not protected from 100-year floods shall not be urbanized due to public safety concerns.*

Implementation Programs - Natural and Cultural Resources:

1. Investigate the establishment of a land trust for open space lands.
2. Establish a process to identify key wildlife habitat areas around Stockton worthy of preservation.
3. Establish a mitigation fee for wildlife habitat preservation and replacement. Such a fee could fund the identification of key wildlife habitat areas and/or a land trust.

Findings, Statement of Overriding Considerations and Mitigation Monitoring Program City of Stockton General Plan Revision and Infrastructure/Public Facilities Master Plans, Adopted January 22, 1990.

AGRICULTURAL RESOURCES

Impact:

1. *Eventual development of the future growth areas would result in the loss of about 9,000 acres of agricultural land, approximately one-half of which is considered to be prime farmland. The inducement of urban growth onto agricultural land beyond the planned urban boundary is also possible.*

Mitigation Measures:

- 1b. *Consider the establishment of an agricultural land trust to acquire or otherwise provide for the long-term preservation of agricultural and other open space land (including wildlife habitat). A number of such trusts have been successfully established throughout the United States. The American Farmland Trust, a non-profit corporation dedicated to the protection of farmland, has been instrumental in setting up trusts in California and throughout the nation and should be consulted regarding establishing a trust in San Joaquin County.*

Impact:

2. *Conflicts and incompatibility between agriculture and urban uses, including dust, smoke, pesticides, noise from agricultural operations impinging on urban uses and the potential for nearby urban residents to trespass upon, litter or vandalize agricultural land and equipment.*

Mitigation Measures:

- 2b. *Consider establishing buffers, such as setbacks, berms, greenbelts and open space areas to separate farmland from urban uses.*

BIOLOGICAL RESOURCES

Impact:

1. *Development in accordance with the proposed General Plan would result in the eventual loss of over 9,000 acres of agricultural land and potential wildlife habitat within the future growth areas, about 3,300 acres of which is considered to be within or on the fringe of the Delta. The Delta, with its wetlands and waterways, provides the most sensitive and highest value wildlife and plant habitat in the planning area. The Delta is home to a number of special status species, provides an important wintering area for migrating water fowl, and is an important fishery. Agricultural land is also an important source of food and cover for wildlife, including special status species.*

Mitigation Measures:

- 1a. *The City, in coordination with the County, the California Department of Fish and Game and other appropriate agencies and organizations, shall establish a process to identify and map significant fish and wildlife habitat areas within and surrounding the planning area. Particular attention should be given to the Delta and to the*

sloughs and other watercourses traversing the planning area. Once identified, these areas shall be targeted for preservation under measures "b" and "c" below.

- 1b. All new development within the planning area shall contribute fees toward a central fund for wildlife habitat preservation and replacement. The fee could be used to defray the costs of the identification and mapping process described in "a", above, and the evaluation and monitoring of habitat replacement plans described in "c", below. It could also be used to acquire and maintain land outside of the planned growth areas which would serve, in part, to replace the agricultural land/wildlife habitat that is lost as a result of urban development.*
- 1c. All new development within the planning area shall mitigate biological impacts by preserving significant habitat identified within the project site by the measure "a" process, above, or the environmental review process for the project. If preservation of the existing habitat is not possible, on-or off-site replacement habitat shall be provided based upon the concept of no net loss of habitat values or acreage. Losses of wintering waterfowl habitat, sensitive species habitat, or other significant wildlife habitat shall be fully compensated. On- or off-site habitat replacement plans should be required as a condition of approval for projects where the loss of significant habitat is involved. The plans shall provide for replacement habitat based upon the concept of no net loss of habitat values or acreage, specific design requirements for new habitat based on the conditions of the site and the type of habitat to be created or restored, periodic monitoring to remove exotic and nuisance vegetation, monitoring and replacement to ensure a specified survival rate of vegetation for a reasonable length of time, and an appropriate financing mechanism and implementation schedule. Memorandums of Understanding shall be entered into between the City and developers for the establishment of the habitat preservation and replacement plans.*
- 1d. For projects adjacent to Delta waterways, disturbance of levee vegetation by dredging or other activities shall be minimized and any vegetation disturbed should be replaced (within flood control and reclamation district maintenance constraints). Dredging shall be avoided during important fish spawning and development periods.*

TRACY

Source: City of Tracy General Plan And Urban Management Plan, July 19, 1993, prepared by City of Tracy and The Planning Center.

Goal OS1:

To conserve natural resources through the protection and enhancement of permanently preserved open space.

Intent:

The interrelationships between local communities and the surrounding natural environment help establish a community as a desirable and healthful place to live. Preserving significant biological features and habitats helps preserve biological diversity, provide passive recreation and educational opportunities and help maintain natural, life-sustaining systems.

Policy:

OS1.1: The City recognizes Old River, Tom Paine Slough, and Paradise Cut as important open space resources for habitat conservation and recreational opportunities.

Actions:

OS 1.1.1:

Pursue establishment of a regional open space and parkway system along Old River and the waterways of the northern portion of the Tracy planning area.

OS 1.1.2:

Pursue cooperative agreements with local, state and federal agencies having jurisdiction of the area, to assist with the establishment of the Old River open space and parkway system.

OS 1.1.3:

Prepare a Specific Plan for the Old River Open Space and Parkway system that will:

- 1. Lead to public ownership of critical areas and allow for private ownerships with conservation and access easement as necessary; and*
- 2. Establish programs for the transfer of ownership of the public that include out-right dedication, development agreements or exactions and may include incentives pursuant to state and federal laws.*

Policy:

OS1.2: Minimize impacts of development on waterways, riparian corridors and adjacent buffer areas.

Actions:

OS 1.2.1:

The City will review all development proposals for the following impacts and require appropriate mitigation measures and/or conditions of approval:

- *Water Quality;*
- *Wildlife habitat;*
- *Physical and viewshed encroachment;*
- *Erosion potential*
- *Noise; and*
- *Obstructions.*

OS 1.2.2:

Provide for joint use of seasonally flooded areas and permanent water features for recreation, flood control and wildlife habitat.

Policy:

OS1.3: The City will seek opportunities for preservation or establishment of wildlife habitat, in conjunction with other uses and developments within the Tracy Urban Management Plan area.

Actions:

OS 1.3.1:

Prepare and implement a plan, in consultation with state and federal agencies, on the management and enhancement of wildlife habitat in environmentally sensitive open space areas throughout the Tracy Planning Area. This plan may take the form of a Habitat Conservation Plan (HCP) as authorized by law under the FESA and CESA.

OS 1.3.2:

Obtain federal and/or state incidental take permits, as authorized by law under the FESA and CESA, before allowing developments in areas which support threatened or endangered species or habitat for such species.

OS 1.3.3:

Join or coordinate with or initiate the preparation and implementation of current and/or future HCP efforts, as authorized by law under FESA and CESA, for areas which support threatened or endangered species or habitat for such species.

OS 1.3.4:

The following shall be considered environmentally sensitive open space areas as identified on the Open Space Plan:

- *Old River, Tom Paine Slough, and Paradise Cut riparian areas*
- *Corral Hollow riparian corridor*
- *Kit fox grassland habitat*
- *Floodplain*

Goal OS 2:

Establish a subregional open space and parkway system that serves both recreational and transportation needs.

Policy:

O.S. 2.2:

Ensure that City's trail and parkway objectives are met by all development

Action:

O.S. 2.2.2:

All parkways identified in the Open Space Plan shall be planned for multi-use trails whenever feasible.

Goal OS3:

Open Space Lands for Future Expansion of City Facilities and Amenities

Intent:

Open space is commonly established for a variety of reasons. In the Tracy planning area a network of Multi-Use Parkway is being established to accommodate near and long-term public facilities and recreational opportunities. The design of individual development projects should recognize the Parkway as community entryways; neighborhood, community center and city boundaries; aesthetic and functional compliments to adjacent development areas; opportunities for wildlife-habitat and stormwater detention; buffers between conflicting land uses and opportunities for pedestrian and bikeway trails consistent with the Tracy Bikeways Master Plan.

Policy:

OS3.1: *Multi-Use open space areas shall be established that provide for a variety of open space uses including:*

- ! Managed wildlife habitat;*
- ! Stormwater runoff detention;*
- ! Community edges and natural amenities*
- ! Agriculture and agricultural research; and*
- ! Passive and active recreational activities in natural, semi-natural and agrarian settings.*

Actions:

OS 3.1.1:

In areas targeted for public facility improvements the City shall seek to have adequate areas to incorporate recreational and habitat restoration projects as well as mitigate potential impacts on agriculture.

OS 3.1.2:

Prior to the time development projects are approved, public facilities planning shall determine future rights-of-way for Multi-Use Parkway within the project area. Parkway rights-of-way shall include roads, transit, public utility easements, drainage facilities, noise attenuation, and landscaping.

OS 3.1.3:

Adequate rights-of-way for the Parkway to accommodate future public facilities shall be established and dedicated at the time the initial development phases are approved.

Policy:

OS3.2: *Parkways should be viewed as a comprehensive system when individual segments are being implemented. Proposed linkages should be maintained within the planning area and ultimately to the surrounding region.*

Actions:

OS 3.2.1:

Individual development projects must provide landscaping improvements consistent with the overall objectives and guidelines for development of the Parkway network.

OS 3.2.2:

Prepare a master landscape plan for Multi-Use Parkways that establishes landscape and hardscape themes and concepts that can visually and aesthetically unify the planning area. Include treatments for wildlife habitat areas, urban forest, natural and formal landscaping with a planting palette of native, compatible and climatically-tolerant species.

Final EIR for the City of Tracy Urban Management Plan/General Plan 1993; Prepared for the City of Tracy by the City of Tracy and The Planning Center; July 19, 1993.

I 11: Loss of Prime Agricultural Land

M11.1 The City shall study and establish a farmland preservation program which could include measures such as purchase of development rights, the transfer of development rights and the donation of conservation easements. These incentives could be partially funded through an impact fee on all new development.

I 21: Potential for development at build out to adversely affect a special status species or habitat for such species (PS)

M21.1 The City of Tracy shall consider modification of the UMLUP to include a habitat overlay which reflects the sensitive nature of grassland habitats south of I-580. A designation of "Conservation/Development" could be used to reflect the fact that no land in this area may be developed without the preparation of an endangered species conservation plan and issuance of an incidental take permit, if required by the USFWS and CDFG, for San Joaquin kit fox pursuant to FESA and CESA.

Without preparation of a comprehensive HCP and subsequent issuance of a FESA Section 10(a) incidental take permit, "take" of kit fox in the vicinity of the I-580 corridor is not possible. Prior to preparation of a comprehensive HCP, the following measures, designed to minimize impacts to the San Joaquin kit fox, shall be implemented (M 21.2, M21.3)

M 21.2

Prior to the issuance of Grading Permits, the City shall require complete San Joaquin kit fox surveys to be conducted by a qualified biologist experienced in kit fox survey methods, in accordance with currently accepted USFWS and CDFG survey methodologies.

M 21.3

If surveys reveal the presence of kit fox or the proposed project site occurs in potential kit fox habitat, the project proponent shall consult with the USFWS and CDFG to determine appropriate mitigation.

M 21.4

Mitigation for impacts to the San Joaquin kit fox shall include replacement habitat. Replacement habitat can be in the form of either on-site or off-site lands or a combination of both. Mitigation shall comply with FESA and CESA as administered by the USFWS and CDFG.

Action 1.3.2 of the Open Space Element should be amended to require consultation with CDFG and if necessary as a result of this consultation, Incidental Take Permits for disturbance to active agricultural lands which provide foraging habitat for Swainson's Hawk within 10 miles of known nesting sites.

The following additional measures are required to minimize the impacts of development on special status species or habitats for such species:

M 21.5

The City shall require all project applicants proposing to development within agricultural or other open space lands, complete biological field surveys in cooperation with Federal and State resource agencies to determine habitat use by special status species. Species specific surveys shall be conducted targeting, at a minimum, those species listed in Table 17 (Special Statu Species Potentially Occurring in the TPA)

M 21.6

If special status species are found to occur on the project site, the project applicant shall identify potential impacts to such species and provide, in conjunction with State and Federal resource agencies, mitigation to reduce impacts to a less than significant level. Impacts may be mitigated by providing for the permanent protection of greater habitat values than those which would be lost as a result of project development.

M 21.7

State and/or Federal incidental take permits shall be obtained before building or grading permits are issued for any development in an area which provides habitat for threatened or endangered species.

M 21.8

If burrowing owls are found to inhabit a proposed project site, the project applicant shall identify project related potential impacts to burrowing owls and consult with the California Department of Fish and Game to determine currently accepted avoidance or mitigation criteria. The resulting mitigation plan shall be incorporated, as directed by CDFG, into development plans.

M 21.9

The City of Tracy shall attempt to formalize the agreement with San Joaquin County and all of its incorporated cities to fully participate in the development and implementation of the San Joaquin County Swainson's Hawk conservation plan. Until such time as the plan is implemented, or in the event the plan is not implemented, or the City of Tracy does not participate in the plan, impact to the Swainson's Hawk and Swainson's Hawk habitat shall be mitigated in consultation with CDFG.

Impact I 22:

Potential degradation of sensitive natural communities and features.

M 22.1

The City of Tracy shall develop and implement a wetlands policy which requires a no net loss of wetland value or acreage in the TPA. The wetland policy shall establish development guidelines which ensure that natural wetlands are preserved whenever possible, and that replacement wetlands are located in proximity to those lost as a result of development. The wetland policy shall require wetland evaluation and consultation with the Army Corps of Engineers and the California Department of Fish and Game prior to disturbance of waterways and wetland features in the TPA. Fish and Game Code Section 1601-03 agreements shall be required for alteration of any "blue-line" seasonal or perennial drainages. The wetlands policy shall contain the following elements:

- Impacts to wetlands shall be mitigated on the basis of acreage and value subject to the provisions of CEQA.*
- Where direct impacts to wetlands are unavoidable, mitigation will take the form of replacement wetland habitat of equal or greater value.*
- The City of Tracy shall discourage development in or conversion of wetlands that would result in a reduction of wetland acreage or wetland habitat values.*
- Where functionally related riparian areas are impacted with a wetland area, or where riparian habitats exist in the absence of wetlands, compensatory mitigation shall be required for riparian area losses for both acreage and value.*

M22.2:

The City of Tracy shall seek cooperative agreements with local landowners to implement agricultural and rangeland practices which are consistent with the preservation of sensitive natural communities within the TPA. Such practices include regulating pesticide use, directing agricultural land uses and cattle grazing away from stream corridors, and monitoring rangeland uses to prevent overgrazing.

M 22.4:

The City of Tracy shall incorporate a biological resources component into its Recreation Master Plan to direct intensive recreational uses away from wildlife habitat areas. The biological resources component of the Recreational Master Plan shall be consistent with the goals and policies of the HCP described above and be considered as an integral part of a plan-wide conservation planning process. At a minimum, the component shall identify biological resources which are sensitive to human disturbance and which may be impacted by active recreation and provide for protection of these resources. If an HCP incorporating the Recreational Master Plan biological resources component is not prepared, the Recreational Master Plan shall establish wildlife preserve areas to protect sensitive habitats and species.

AGRICULTURE, SOILS, AND MINERAL RESOURCES:

I 77: *Cumulative Increase in soil erosion, agricultural land conversion, and a cumulative decrease in lands available for mineral resource extraction.*

M 77.1

Mitigation measures in Section 3.3 propose the establishment of a farmland preservation program. The City should cooperate with San Joaquin County in the establishment of the Program.

VISUAL AND AESTHETIC RESOURCES

I 79: *Regional conversions of plant and animal habitats to urban land uses.*

M 79.1

Mitigation measures in Section 3.5, Biological Resources, propose the development of policies and plans to reduce impacts to sensitive habitat areas. A regional conservation plan for the management of listed species in the TPA, as proposed in Section 3.5, Biological Resources, would mitigate habitat losses for these species. However, cumulative habitat losses would remain significant.

Exhibit 2 - SJMSCP Compensation Zone Maps

Exhibit 3

SJMSCP

Excerpts of Referenced Sections

(unless already contained in text of fee study report)

4.1

....In addition to this biological approach to compensation for Open Spaces, the SJMSCP also takes a non-biological approach to Open Space compensation. As noted in Section 7.3, the SJMSCP is a multi-species habitat conservation and Open Space plan. This means that, in addition to plant, fish and wildlife benefits, the SJMSCP considers the non-wildlife value of Open Spaces including agricultural, educational, recreational, scenic, flood control and other beneficial Open Space uses. These non-wildlife benefits are provided by Agricultural Habitat Lands, Natural Lands and Multi-Purpose Open Space lands.

This non-biological view of Open Spaces is supported by the general plan policies of San Joaquin County's seven cities and the County itself. These general plans contain policies establishing the value and importance of environmentally sensitive lands and Open Space resources to agricultural productivity, biodiversity, and the welfare of county residents (see Appendix E). These general plans call for programs to offset both the biological and non-biological impacts of Converting Open Spaces to non-Open Space use. The SJMSCP recognizes the multiple uses and benefits of Open Spaces and, while its primary purpose is to provide comprehensive mitigation to offset impacts to plant, fish and wildlife and habitats, the establishment of Open Space Preserves will also offset many non-biological impacts associated with the Conversions of Open Spaces consistent with the directives of local general plans.

Consistent with this multi-use/multi-benefit view of Open Spaces, the proposed funding plan spreads costs of permanently preserving Open Space and habitat land in San Joaquin County among not only new development, but also among other beneficiaries of the SJMSCP. Therefore, fees will be paid, pursuant to the SJMSCP, for the Conversion of all Open Space land categories: Agricultural Habitat Lands, Natural Lands (vernal pool lands as described above and non-vernal pool lands as described here), and Multi-Purpose Open Space Lands. The method for calculating fees on this basis is described, in detail, in Section 7.4.1.2 of the SJMSCP.

Because the compensation ratios for Agricultural Habitat Lands and Natural Lands differ (1:1 and 3:1 respectively), and are directly related to Incidental Take, whereas the Conversion of Multi-Purpose Open Space Lands does not carry with it a requirement to increase the total mitigation acreage requirement of the Plan to offset Incidental Take, the SJMSCP analyses the extent and effects of Conversion of Open Space lands for these three categories: Agricultural Habitat Lands, Natural Lands and Multi-Purpose Open Space Lands.

The SJMSCP addresses over 109,302 acres of new land Conversions from Open Space to non-Open Space uses at full buildout (estimated to occur between 2001-2051). The SJMSCP Permits will authorize Incidental Take on all 109,302 acres Converted from Open Space uses. Of this 109,302 acres of Open Space Conversion, the Conversion of 71,837 acres of Agricultural Habitat Lands and Natural Lands will result in a compensation requirement of 100,841 acres of Preserves. The Conversion of the remaining 37,465 acres of Multi-Purpose Open Space Land Conversions will contribute to the costs of managing, monitoring, and enhancing the 100,841 acres of Open Space Preserves for the SJMSCP, but does not increase the total compensation requirement of 100,841 acres.

The details of the projected Open Space Conversions resulting from SJMSCP Permitted Activities and the distribution of these Conversions over the three categories of Open Space lands recognized by the SJMSCP are detailed in the following tables. These Open Space Conversion acreages are the primary guide used for assessing the impacts to SJMSCP Covered Species. Pursuant to the preceding discussion, Incidental Take is expressed in the following tables as the total acres of Natural Lands, Agricultural Habitat Lands and Multi-Purpose Open Space Lands to be Converted from Open Space use by SJMSCP Permitted Activities occurring between 2001 and 2051. However, while SJMSCP Permitted Activities occurring on all categories of Open Space lands contribute to the cost of the SJMSCP, only the Natural Land and Agricultural Habitat Land categories are used to determine total Preserve acreage requirements for the SJMSCP (one Preserve acre for each Converted acre of Agricultural Habitat Land and three acres of Preserve for each acre of Natural Land Converted). In these tables, Take of habitat is expressed in acres. See Chapter 8, Section 8.2.1 and Appendices L and X for a complete description of SJMSCP Permitted Activities.

5.3.2.1 Fees

As described in Section 7.4.1, individuals opting for coverage under the SJMSCP may pay a fee. The fee structure under the SJMSCP is:

- A. \$750 per acre for Conversion of Multi-Purpose Open Space Lands,
- B. \$1,500 per acre for Conversion of Agricultural Habitat Lands and Natural Lands (except for vernal pools); and,
- C. \$30,000 per acre for the wetted surface area of vernal pools and \$5,000 per acre for the upland grasslands surrounding vernal pools. The SJMSCP assumes a 12% wetted surface area for vernal pool grasslands. This translates into an overall average cost per acre for vernal pool grasslands of \$8,000 per acre.

5.3.2.2 In-Lieu Land Dedications

Private individuals receiving Incidental Take coverage pursuant to the SJMSCP may, in-lieu of fee payments, offer suitable land for dedication. Dedications shall be approved by the JPA with the concurrence of the Permitting Agencies' representatives on the TAC. In-lieu lands shall meet minimum parcel sizes designated in the SJMSCP Preserve design descriptions or, if smaller, should be adjacent to an existing Preserve which, in combination with in-lieu lands, meets Preserve size minimums. In-lieu lands shall include an endowment payment (equal to the management endowment and administration costs of land acquisitions as prescribed in Sections 7.2.3 and 7.2.4) to ensure the management of the dedicated land in perpetuity. Dedicated land may be lands on-site or off-site from the project location owned by the Project Proponent. Conservation easements (or fee title) for owner-dedicated lands, referencing the JPA or another suitable agency or organization as easement or fee title holder, shall be recorded with the office of the County Recorder. Easements shall be consistent with the requirements of California Civil Code Section 815.3 which specifies those who are qualified to hold conservation easements.

5.3.2.4 Mitigation Banking

The SJMSCP anticipates using two categories of mitigation banks:

- A. **SJMSCP Mitigation Banks.** The SJMSCP anticipates enhancing and/or restoring vernal pool lands in excess of those required for compensation under the SJMSCP. This excess

may be sold as mitigation or compensation "credits" to individuals not covered by the SJMSCP and in need of vernal pool mitigation lands. The SJMSCP may consider establishing other types of mitigation banks during the life of the Plan, as deemed necessary.

- B. **Private Mitigation Banks.** A private property owner may establish a mitigation bank on all or a portion of his or her property for one or more SJMSCP Covered Species. A Project Proponent needing that particular habitat type for mitigation for a project elsewhere may then pay the property owner or "bank operator" to permanently manage the enhanced property for SJMSCP Covered Species. Private mitigation banks shall be consistent with the SJMSCP Preserve selection criteria (Section 5.4.4) and shall be approved by appropriate state and federal agencies pursuant to applicable state and federal guidelines for mitigation banks and other applicable policies, laws and regulations. Credits purchased from private mitigation banks must be for habitats which already are existing as protected lands within the mitigation bank Preserves prior to the purchase of credits (i.e shall not be purchased from mitigation banks which intend to create protected lands in the future).

Land banks used to offset impacts to wetlands must comply with Federal Register Notice: November 28, 1995, Vol. 60, No. 228, Federal Guidance for the Establishment, Use and Operation of Mitigation Banks, and other applicable policies, laws, and regulations. All mitigation banks, whether SJMSCP banks or private mitigation banks, shall be reviewed and approved by the Permitting Agencies prior to use. Aerial photographs indicating the condition of habitat lands, prior to undertaking habitat enhancements for banking, shall be used when establishing baseline conditions for mitigation banks unless otherwise approved by the Permitting Agencies.

**TABLE 7.4-1
SJMSCP FUNDING PLAN (2001-2051)**

SJMSCP FUNDING SOURCE	ACRES OF CONVERSION 1999-2049	IMPACT FEE PER ACRE	TOTAL REVENUE	PERCENT OF TOTAL FUNDING
CWA 404) /a/				
Vernal Pool Habitat Mitigation Fund/a, b/ - Wetted Surface Area Upland Grasslands	707 5187	\$30,000 \$5,000	\$21,210,000 \$25,935,000	8% 10%
Agricultural Habitat Lands, Submerged Aquatic Habitat and Non-Vernal Pool Natural Lands Mitigation Fund	65,943	\$1,500	\$98,914,500	38%
Multi-Purpose Open Space Mitigation Fund	37,465	\$750	\$28,098,750	11%
<i>Subtotal</i>	109,302		\$174,158,250	67%
OTHER FUNDING SOURCES (PAST CONVERSION AND NEIGHBORING LAND PROTECTION PRESERVES)				
Other State and Federal Sources			\$42,267,104	16%
Revolving Fund/Re-sales/c/			\$26,482,266	10%
Conservation Bank Revenue /d/			\$5,261,613	2%
Lease Revenue & Other/e/			\$13,328,232	5%
<i>Subtotal</i>			\$87,339,215	33%
TOTAL			\$261,497,465	100%

/a/ Wetted surface areas of vernal pools are \$30,000/acre, while upland grasslands are \$5,000/acre. This averages \$8,000 for vernal pool grasslands based on an assumption of an average 12% wetted surface area/acre for vernal pool grasslands.

/b/The fair share cost allocation in Section 7.3 establishes that new development shall pay approximately 62% of the SJMSCP costs (rounded to 60%). All development fees for the SJMSCP were calculated based upon a 60% share for new development. New development was defined for the purposes of the fair share allocation as **urban and rural new development** (agricultural activities triggering CWA Section 404 and/or subject to the ESA were not included in the fair share allocation analysis). Agricultural activities were not originally considered for SJMSCP coverage. However, Conversion of 5,000 acres of vernal pool grasslands, primarily for agricultural activities (e.g., Conversion of vernal pool grasslands to orchards and vineyards) which trigger Section 404 of the Federal Clean Water Act and/or are subject to the ESA, were added to the SJMSCP long after all fee calculations for urban and rural new development were finalized. The addition of 5,000 acres of vernal pool grasslands did not raise the fees for the SJMSCP for new urban and rural development, because the Vernal Pool Habitat Mitigation Fund fees are not based on the fair share allocation formula but rather are based only on the total costs of preserving and creating vernal pool habitat (see Section 7.3 for discussion of why vernal pool Conversions were excluded from the fair share allocation analysis). Urban and rural new development continues to pay a 60% share of the total SJMSCP costs (approximately 13% of the Vernal Pool Habitat Mitigation Fund plus 47% divided between the Multi-Purpose Open Space Mitigation Fund and the Agricultural Habitat Lands/Non-Vernal Pool Natural Lands Mitigation Fund). Agricultural activities which trigger CWA Section 404 and/or are subject to the ESA contribute (by payment of fees) an **additional (and separate from the fair share allocation)** 5% to the 60% fair share paid by urban and rural new development.

/c/ Intended to be a revolving fund. Under this category, lands are purchased in fee title, conservation easement are placed on the land and land is re-sold with easements. Proceeds are used to purchase additional lands.

/d/ Funded by sale of additional vernal pool mitigation credits to offset impacts to vernal pool habitat from activities not covered by the SJMSCP.

/e/ Assumes \$50 per acre per year net lease revenue on 10 percent of agricultural Preserve acres and some net return on re-sales of Preserves for agricultural use. Remainder of net return on re-sales is included under /c/. "Other" potential sources of funding include private fund-raising, hunting revenues, license plate revenues (if pursued), land dedications (charitable contributions) and investments (e.g., as prescribed in Section 7.5.4 and including purchases of non-Preserve lands for future re-sale and profit)

A more detailed description of each of these funding sources is found in Sections 7.4.1 and 7.4.2.

7.4.2 OTHER FUNDING SOURCES

7.4.2.1 Development Fees

Development fees, as described in Sections 7.3 and shown in Table 7.4-1, new development will provide approximately 65% of SJMSCP funding costs. As indicated in Table 7.2.5-2, habitat acquisition costs will be approximately 65% of the total cost of the SJMSCP. While all funding sources will be combined within a single funding pool, this comparison of funding sources and Plan costs indicates that development fees should provide funding equivalent to approximately 100% of the costs of acquiring (but not enhancing or managing) the 100,841 acres of SJMSCP Preserve lands.

7.4.2.2 State And Federal Funding

State and federal funding sources are expected to provide approximately 16% of the total cost of implementing the SJMSCP. The JPA will be responsible for preparing grant applications or undertaking

other actions, as necessary, to secure these funds. Pursuant to Section 7.5.3 of the SJMSCP, state and federal funds and other grant funds must be secured three years in advance of the need to expend such funds to avoid potential funding shortfalls. As indicated in Table 7.2.5-2, management costs for the Plan will total approximately 16% of the total Plan cost. While all funding sources will be combined within a single funding pool, this comparison of costs and funding sources indicates that state and federal funding sources should provide funding equivalent to approximately 100% of management costs for the 100,841 acres of SJMSCP Preserve lands. Section 7.5.2.4 describes the procedures to be undertaken should anticipated state and federal funds not be obtained, resulting in funding shortfalls.

7.4.2.3 Mitigation Banking

Mitigation banking pursuant to the SJMSCP is described in Section 5.3.2.4. As discussed in Section 5.3.2.4, mitigation banks may be in the form of banks established by the JPA or by private property owners. Mitigation banks used to offset impacts to wetlands must be consistent with *Federal Register Notice: November 28, 1995, Vol. 60, No. 228, Federal Guidance for the Establishment, Use and Operation of Mitigation Banks*. All mitigation banks, whether SJMSCP banks or private mitigation banks, shall be reviewed and approved in writing by the Permitting Agencies prior to their use.

It is anticipated that mitigation banking efforts undertaken by the JPA will be primarily for the establishment of vernal pool mitigation banks in the eastern portion of San Joaquin County. Typically, large tracts of vernal pool habitat will be created by the JPA, rather than numerous smaller tracts, resulting in anticipated cost-efficiencies in creating vernal pool habitat. Therefore, it is expected that, in addition to providing compensation to offset the impacts to vernal pools for SJMSCP Permitted Activities, the JPA will also be able to create acres of vernal pool habitat in addition to those acres needed to offset the impacts identified for the SJMSCP in conjunction with its SJMSCP efforts. The JPA could then sell "compensation credits" from the vernal pool mitigation banks both to those undertaking projects pursuant to the SJMSCP and to individuals in need of vernal pool mitigation who are not covered by the SJMSCP (e.g., individuals or agencies from other counties, located within the "credit area" of the vernal pool bank; those undertaking activities not covered by the SJMSCP within San Joaquin County; or those undertaking activities by agencies not participating in the SJMSCP). In this manner, the SJMSCP should produce some revenues to assist in financing the SJMSCP.

Mitigation bank revenues compose only 2% of the overall funding for the Plan. Since income for vernal pool mitigation bank sales was estimated at only one-half the current market rate for the sale of vernal pool mitigation credits, this funding source is considered reliable.

7.4.2.4 Lease Revenues

The JPA will own some lands in fee title (approximately 10% of total Preserve acreages is anticipated to be held in fee title by the end of the 50-year Plan term). Normally, these will be dry land grazing lands which support vernal pools in the eastern portion of the County. Some limited acreages held in fee title may be able to produce row and field crops. It is anticipated that the JPA will lease portions of some lands held in fee title to farmers or ranchers to grow row and field crops (where appropriate) or, more likely, to graze cattle. The compatibility of proposed activities to be conducted by the lessee and conservation goals shall be determined by the JPA with the concurrence of the Permitting Agencies' representatives on the TAC. Income from the sale of these leases is expected to provide a revenue source for the SJMSCP.

To achieve Plan income in the range of \$13 million (as anticipated in Table 7.4-1) over the 50-year term of the Plan, lease revenues need to average \$133,334 per year from 5,150± acres of lands held in fee title (this acreage is just over 5% of total Preserve lands, or approximately half of the lands expected to be held

in fee title), or approximately \$26 per acre. In San Joaquin County, leases and rentals can range from \$50 to \$300/acre with dry land grazing revenue holding at \$18/acre. Given this range of prices, it appears the SJMSCP can easily achieve an overall lease-back revenue of \$26 per acre.

7.4.2.5 Revolving Fund/Re-sales

The recycling of funds from the re-sale of lands using a fixed portion of the SJMSCP funds, designated as a revolving fund, is expected to provide 10% of the monies necessary to fund the SJMSCP.

This process involves the acquisition of land, placing of a conservation easement on that land, and then re-sale of the land. Monies generated from the re-sale will be used to acquire additional lands in the same manner. Monies used for the acquisition of habitat are thus re-used, or recycled. At each acquisition and sale, it is expected that some transaction costs will be lost from the revolving fund. Therefore, the "revolving fund" monies decreases as time passes. Many land trusts find the process so valuable, however, that their revolving funds are frequently replenished to reimburse transaction costs lost and to allow continuing acquisition of Preserve lands with the revolving fund. If the JPA finds this approach highly successful, financing of more than 10% of SJMSCP acquisition costs could be realized.

This method has been little tested by public agencies. However, the cities of Dixon and Vacaville recently purchased, placed an open-space easement on, and resold 1,003 acres within a nine-month period. According to the city managers of those jurisdictions, this was done with a loss of only \$13,000-\$20,000 in transaction costs. In addition, these managers report a similar transaction successfully completed in Douglas County, Nevada for 10,000 acres. In discussions with the Trust for Public Land, this use of a re-sale or revolving fund is considered a primary tool for financing acquisitions by major land trust organizations. Therefore, the re-sale funding component of the SJMSCP appears extremely promising and a stable source of funding.

7.4.2.6 Other Funding Sources

This funding category, which includes private fund-raising, hunting revenues, license plate revenues (if pursued), land dedications (charitable contributions) and investments (e.g., purchase of non-Preserve lands for future re-sale and profit). The SJMSCP Funding Plan combines other funding sources with lease revenues (Section 7.4.2.4). Only funding from lease revenues has been calculated into the overall funding for the SJMSCP due to the unpredictability of other funding sources in this category. However, the likelihood of receiving SJMSCP funding from some of these sources is evaluated as follows:

The potential for generating funds through hunting revenues is unknown. However, duck hunting clubs are somewhat popular in portions of San Joaquin County located in the Sacramento-San Joaquin Delta along the Pacific Flyway. This is the most likely source of funds which might be generated through hunting pursuant to the SJMSCP.

Prior to the issuance of SJMSCP Permits, the San Joaquin Council of Governments was approached by several local landowners seeking to donate land to the SJMSCP Preserve system in exchange for tax benefits to be received by the local landowners pursuant to existing state and federal law. It is anticipated that this funding source, while unpredictable, will provide some SJMSCP Funding or, at least, provide Preserve lands at a little or no cost to the SJMSCP, thereby reducing Plan costs.

The JPA is authorized to make investments pursuant to Section 7.5.4. These investments may include the purchase of non-Preserve lands for re-sale and profit. Income from this potential funding source is dependent upon the local real estate market.

7.5.2.2 Annual Index Adjustments to Fees

To ensure that SJMSCP development fees, which were calculated in terms of 1996 dollars, keep pace with inflation, annual adjustments, consistent with the California Construction Cost Index (CCCI), shall be made to the fees described in Sections 7.4.1 and 7.4.1.3. Fees will be adjusted to 2001 dollars pursuant to the California Construction Cost Index (CCCI) and Section 7.5.2.2 six months after the SJMSCP's Effective Date. Thereafter, fees will be adjusted annually as provided in this Section. Unlike the Consumer Price Index (CPI) which is based on the prices of typical goods and services (e.g., food, clothing, gasoline), the CCCI is based upon costs of lumber, steel, concrete, wages of construction workers and similar material costs and labor factors associated with construction costs. The CCCI is based upon information published monthly in the Engineering News Record (ENR). The ENR Building Cost Index is based upon indexes that the ENR prepares for twenty major U.S. cities including Los Angeles and San Francisco. The CCCI is calculated by the State of California's Real Estate Services Division Cost Control Unit by averaging the Los Angeles and San Francisco ENR Building Cost Indexes (future cost projections are developed by the State Department of Finance). The California Construction Cost Index used by the SJMSCP shall be the same as the CCCI used and calculated by the State of California (an average of costs from both Los Angeles and San Francisco). The CCCI used by the SJMSCP shall be the one-year averaged CCCI. Therefore, fee adjustments shall be made in January of each year based upon the preceding years' averaged CCCI. The CCCI baseline year for the SJMSCP is 1996. The CCCI baseline index to be used in calculating fee adjustment for the SJMSCP pursuant to the CCCI is 3470 (the 1996 index).

An alternative index for making annual adjustments to the fees may be adopted based upon actual experiences of the JPA as the Plan progresses. Such annual index adjustments shall be made only after the solicitation of input from affected parties through the public hearing process in accordance with Section 66000 et seq. of the California Government Code.

7.6

COST-BENEFIT ANALYSIS

....These quantified cost-benefits do not include the non-monetary benefits of the Plan which also will result from the Plan (e.g., quality of life, potentially avoiding new listings of species, Neighboring Land Protections etc.).

**TABLE 7.6-1
SJMSCP COST-BENEFIT ANALYSIS**

	Annual Cost Savings	50-Year Cost Savings
Residents, Taxpayers of San Joaquin County/a/	\$248,150	\$12,407,500
Local Governments	\$222,300	\$11,115,000
Permitting Agencies	\$278,550	\$13,927,500
Project Proponents/b/	\$5,790,000	\$289,500,000
Legal: Conservation, Project Proponents and Governmental Agency interests/d/	\$81,000	\$4,050,000
TOTAL COST SAVINGS UNDER THE SJMSCP/c/	\$6,371,850	\$318,592,500

- /a/ These costs savings are included in the \$5,790,000 annual savings contained within the "Project Proponent" category. These costs are those saved by public agencies when those agencies undertake public projects. These cost savings are counted only once in the total Plan savings of \$6,371,850 annually.
- /b/ Savings are found primarily through elimination of biological surveys performed by Project Proponents, staff/development costs, consulting costs and legal costs. **Please refer to the detailed analysis found in the Hausrath Economics Group *Economic Analysis for the San Joaquin Multi-Species Habitat Conservation and Open Space Plan, April 7, 1997*, (Appendix Q) for an accounting of subcategories with increased, decreased or unchanged costs which result in this total savings.**
- /c/ This cost savings reflects the savings **after subtracting administration costs for the SJMSCP.**
- /d/ These cost savings could range as high as \$200,000 per year. The total indicates an anticipated average.

In addition to these costs savings:

MONIES GENERATED FOR THE PURCHASE OF EASEMENTS AND FEE TITLE TO BE PAID TO LANDOWNERS. The Plan would generate approximately \$160,000,000 solely for easement payments and purchase of fee title to be paid to landowners for the acquisition of Preserve lands.

8.2.1

SJMSCP PERMITTED ACTIVITIES

The following list describes the activities for which the SJMSCP will provide comprehensive compensation, avoidance and minimization of impacts to threatened, endangered, rare and other unlisted SJMSCP Covered Species for which Incidental Take authorization will be obtained under the Plan's associated permits (Permitted Activities). As described in Section 8.4(B), these Permitted Activities may be undertaken pursuant to the SJMSCP only by Project Proponents operating within the jurisdictional boundaries of a Permittee (i.e., if San Joaquin County opted not to adopt the SJMSCP and the City of Tracy adopted the SJMSCP, Project Proponents may undertake mining activities pursuant to the SJMSCP within the jurisdictional boundaries of the City of Tracy, but not within the jurisdictional boundaries of San Joaquin County).

Coverage for unmapped land uses or activities as designated in SJMSCP Section 3.4 and contained in the following list, are subject to case-by-case review by the JPA's Technical Advisory Committee (TAC) to ensure that the biological impacts of the proposed projects fall are within the parameters established by the SJMSCP as originally adopted.

For unmapped land uses which are consistent with the overall biological intent of the SJMSCP and which do not introduce significant new biological conditions into the Plan area or the SJMSCP's conservation program or result in significant new or different environmental impacts, or for land uses which have impacts which are equal to or are less than those described in the SJMSCP originally adopted; then the TAC, with the concurrence of the TAC's representative from the Permitting Agencies, may permit SJMSCP Coverage for the proposed land use activity or action pursuant to a Minor Revision as described in SJMSCP Section 8.8.3 (45).

For those unmapped land uses which have an effect on the SJMSCP Covered Species and levels of Incidental Take which are greater than, but not significantly different than, those described in the SJMSCP originally adopted; coverage of the proposed land use activity or action may be permitted subject to a Minor Amendment as described in SJMSCP Section 8.8.4(D).

For those unmapped land uses which have an effect which is significantly different (i.e., greater than) that those described in the SJMSCP originally adopted, coverage of the land use may be permitted subject to a Major Amendment as described in SJMSCP Section 8.8.5(I).

Anticipated levels of Open Space Conversions, in acres, for these SJMSCP Covered Activities are provided in Table 4.2-1 and are described in detail in the following Sections:

1. **Development:** New commercial, residential, and industrial construction [both ministerial and discretionary (as defined in California's State CEQA Guidelines Sections 15369 and 15357) unless specifically exempted] and agricultural uses within the designated urban boundaries (as indicated on the *SJMSCP Planned Land Use Map*) requiring a discretionary entitlement (permit) by local public and private agencies.
2. **Aggregate mining :** Located both inside and outside of the designated urban boundaries as indicated on the *SJMSCP Planned Land Use Map* and pursuant to supplemental mapping indicating potential aggregate mining locations provided to the Permitting Agencies.
3. **Public and Private Agency Activities (e.g., Highway Construction and Highway Maintenance undertaken by public agencies, Lodi Wastewater Project at White Slough, Mapped Recreational Facilities undertaken by public agencies, maintenance of existing facilities by irrigation districts, school expansions):** Projects carried out by

Plan Participants including new construction, expansion, and maintenance of existing or future: non-federal transportation projects described in Appendix L, school expansions, non-federal flood control projects described in Appendix L, and parks and trails located both inside and outside of designated urban boundaries as indicated on the *SJMSCP Planned Land Use Map*. Maintenance Activities undertaken by Plan Participants on existing facilities, as described in Chapter 10, are Permitted Activities. Maintenance Activities which are Categorically Exempt pursuant to California's State CEQA Guidelines, as described in Chapter 10, are exempt from the SJMSCP compensation requirements.

4. **Projects which could affect fisheries and/or wetlands indirectly, which are located within non-jurisdictional wetlands.** Activities covered within this category are limited to the Conversion of three acres of submerged aquatic habitat, activities affecting up to three acres of Tule/Channel Island (I) habitats, and the SJMSCP's 4,790 acres of water features to be compensated pursuant to the Plan at a ratio of 3:1 (all three acres to be created) throughout the life of the SJMSCP without a Major Amendment to the SJMSCP.

Activities covered pursuant to this category shall not be located within jurisdictional wetlands, Waters of the United States, tidally influenced waters or waters occupied by fish species which are not covered by the SJMSCP (salmon, steelhead). This category is specifically intended to cover activities located within ephemeral drainages, small tributaries which are non-tidally influenced with flows below the threshold necessary to qualify as jurisdictional waters or Waters of the United States, and the upper reaches of the Calaveras River.

Activities covered in this category include: maintenance of SJAFCA levees, construction of new recreational facilities including trails and parks; construction of private-use small docks and constructing public and private use bridges and road crossings. Activities resulting in Take of water features other than submerged aquatic or "T" vegetation types may include any SJMSCP Covered Activity listed herein unless otherwise specifically prohibited by the SJMSCP (e.g., in the case of Take of known occupied riparian brush rabbit habitat).

5. Non-agricultural activities carried out by Plan Participants or Third Parties on agriculturally-zoned properties or other zoned properties located outside of boundaries indicated on the SJMSCP Planned Land Use Map and described in the following paragraphs. These use areas are unmapped, total 3,163 acres of anticipated Incidental Take, and are scattered throughout the County. These activities are subject to case-by-case reviews as prescribed in Section 3.4:

- A. **Communication Services** Communication services refers to commercial or public establishments or facilities which primarily provide electronic communication of audio/visual information via cable, microwave or radio frequency transmission including communication services which require the mounting of a wireless telecommunication facility on an existing building or structure (e.g., wireless communication facilities for cellular radio mobile services, paging services and personal communication services); communication services which require the construction of a new freestanding support structure for wireless telecommunication antennas and associated support equipment (e.g., wireless telecommunication mono-poles and lattice towers for cellular radio mobile services); communication services which require the construction of a new freestanding support structure for the purposes of radio or television broadcasting (e.g., radio and television broadcast towers and airport communication towers); and communication

services which require the regular day-to-day presence of personnel at a site to provide the services being offered (e.g., radio and television broadcasting studios, cable TV administrative offices, and telegraph message centers).

- B. **Funeral/Interment Services:** Mortuaries, crematoriums, columbariums, mausoleums and similar services when in conjunction with, and including, cemeteries
 - C. **Major Impact Projects** Major impact services are those land intensive activities which must be located away from residences or concentrations of people due to the magnitude or nature of the operation's impacts on the surrounding environment including airports not primarily serving agricultural activities, sanitary landfills, hazardous waste disposal sites, and correctional institutions. Use of the SJMSCP to provide compensation for impacts to plants, fish and wildlife created by projects within this category requires approval by the JPA with the written concurrence of the Permitting Agencies' representatives on the TAC. A Permit Amendment pursuant to either Section 8.8.3 or 8.8.4 may be required to include projects within this category (e.g., to address issues pertaining to federal involvement or other special regulatory requirements associated with these activities). SJMSCP coverage for SJMSCP Permitted Activities associated with these projects which are listed as SJMSCP Permitted Activities in SJMSCP Section 8.2.1 do not require prior written consent after a review by the Permitting Agencies [e.g., airport communication towers listed in 8.2.1(6)(A)].
 - D. **Public Services:** Fire stations, police stations, public administration centers, community centers
 - E. **Recreation/Golf Courses:** Campgrounds, parks, trails (coast-to-crest included), golf courses, outdoor sports clubs
 - F. **Religious Assembly:** Churches
 - G. **Utility Services:** Utility services refers to those facilities which provide electricity, solids, liquids, or gas through wires or pipes including utility services that are necessary to support principal development involving only minor structures (e.g., electrical distribution lines, utility poles, and pole transformers; sewer and water lines); and utility services involving major structures (e.g., natural gas transmission lines and substations).
 - H. **Miscellaneous:** Museums, libraries, and hospitals
6. Non-agricultural activities carried out by Plan Participants or Third Parties on agriculturally-zoned properties or other zoned properties located outside of boundaries indicated on the *SJMSCP Planned Land Use Map* and described in the following paragraphs. These use areas are scattered throughout the County and are subject to case-by-case reviews as prescribed in Section 3.4:
- A. **Natural Gas Well Drilling;**
 - B. **Homesites:** Residences in AG zones are not covered by the SJMSCP, however residences in AG Urban or AG Limited Zones are included under the Plan.
7. **Conversion of Vernal Pool Grasslands:** Conversion of up to 5,000 acres of vernal pool grasslands to orchards or vineyards and for similar agricultural purposes when such agricultural activities trigger requirements of Section 404 of the Federal Clean Water Act and/or are subject to the ESA. This 5,000 acres is in addition to the Conversion of 894 acres of vernal pool grasslands for other SJMSCP Permitted Activities. The Conversion of vernal pool grasslands to orchards or vineyards requires the approval of the JPA with the concurrence of the Permitting Agencies' representatives on the TAC. **Until and unless a programmatic general permit, or equivalent coverage, can be obtained from the U.S. Army Corps of Engineers, this activity shall require the acquisition of a separate Section 404 permit from that agency and a**

Consultation by the U.S. Fish and Wildlife Service (The U.S. Fish and Wildlife Service shall use the biological opinion generated for the SJMSCP to assist in facilitating its consultations with the Corps, where possible.)

8. **Managing Reserves, Enhancing Preserves, Monitoring Preserves and Scientific Collection Associated with These Activities :** Population surveys and scientific research on Preserve lands or potential Preserve lands including, but not limited to, inventorying (e.g., trapping, handling, marking), monitoring, installing preserve enhancements (e.g., earth-moving to create new wetlands including vernal pools) as described in Section 5.8, research, scientific collection and similar habitat management activities conducted by the JPA or state, federal, or local agencies for the purposes of conserving or enhancing habitat for SJMSCP Covered Species. Activities in this category shall not trigger requirements for compensation and establishment of Preserves. See Section 5.8 for conditions associated with these activities.
9. **Relocation of SJMSCP Covered Species:** Relocation of SJMSCP Covered Species by qualified biologists hired by the JPA and approved by the CDFG and USFWS as prescribed in Section 5.2.5 of the SJMSCP.
10. **Other Anticipated Projects - 5,340 acre contingency (e.g., annexations, general plan amendments adjacent to existing incorporated cities and defined communities; airport expansions adjacent to existing airports and Freeway Services Commercial) :** General plan amendments (excluding the establishment of new towns or new communitiesBnote: Mountain House new town is covered by the SJMSCP); city annexations; freeway service commercial; expansion of unincorporated, existing industrial areas; and similar anticipated projects located outside of designated urban boundaries as indicated on the *SJMSCP Planned Land Use Map*, but as approximately mapped for the purposes of analyzing potential impacts associated with this category of activities. Projects listed in this category of Permitted Activities shall be located adjacent to existing city limits, adjacent to the boundaries of defined communities, or adjacent to existing airport facilities (i.e., Stockton, Lodi and Tracy airports) as indicated on the *SJMSCP Planned Land Use Map* A cap of 5,340 acres is allocated for Permitted Activities in this category. The 5,340 acres of Open Space Conversion resulting from Permitted Activities in this category are anticipated to include 1,018 acres of Natural Lands, 1,899 acres of Agricultural Habitat Lands and 2,423 acres of Multi-Purpose Open Space Lands. 5,340acres of Open Space Conversion acreage has been included in Open Space Conversion estimates in SJMSCP Chapter 4.

8.2.3 USE OF THE SJMSCP FOR PRIVATE ACTIVITIES REQUIRING FEDERAL APPROVAL - CONSIDERATION OF SJMSCP IN SECTION 7 CONSULTATIONS

Private activities which are federally authorized, funded, or are carried out by federal agencies are not SJMSCP Permitted Activities. However, during Section 7 Consultations for projects which are federally authorized, funded, or are carried out by federal agencies occurring within San Joaquin County (e.g., Projects for which a Section 404 permit has been secured and the Permitting Agencies have approved mitigation pursuant to the SJMSCP for impacts to SJMSCP Covered Species), the U.S. Fish and Wildlife Service will, to the maximum extent feasible and consistent with the biological needs of the species: 1) rely upon the Section 7 Biological Opinion issued for the SJMSCP and, 2) to the maximum extent feasible and consistent with the biological needs of the species, rely upon the SJMSCP's conservation strategy when establishing minimization and mitigation, including compensation ratios, appropriate for these projects.

8.2.4 COVERAGE FOR ACTIVITIES NOT LISTED IN 8.2.1

Project Proponents not otherwise subject to the SJMSCP (See Section 9.8 of the Implementing Agreement) may participate in the SJMSCP upon making a request to the JPA. The JPA may approve such requests with the concurrence of the Permitting Agencies' representatives on the TAC. Approval of such requests shall be contingent upon the JPA making the following findings: 1) that sufficient Incidental Take acres remain pursuant to Section 4.1 as necessary for Project Proponents to undertake SJMSCP Permitted Activities listed in Section 8.2.1, and 2) mitigation pursuant to the SJMSCP is appropriate for the impacts on the Covered Species. Section 9.8 of the Implementation Agreement provides the process for obtaining coverage pursuant to this Section.

8.2.5 SJMSCP COMPENSATION ZONE MAPS

Payment of the development fee described in Sections 7.4.1 and 7.4.1.3 and/or other compensation will be determined based on preconstruction surveys in the field which confirm vegetation types on site as indicated by the *SJMSCP Vegetation Maps*. To assist planners in estimating potential fees for Project Proponents and to assist the JPA in monitoring the general amounts and types of habitats being Converted pursuant to the SJMSCP (i.e., Natural Lands, Agricultural Habitat Lands, Multi-purpose Open Space Land), the *SJMSCP Compensation Zone Maps* will be used as follows:

The *SJMSCP Compensation Zone Maps* are maps which classify the entire County into one of the following categories (which track general habitat type to determine compensation ratio requirements) and Fee Zones (used to determine fees on a per/acre basis), as described below:

- | | |
|---|--|
| A. Category A/ No-Pay Zone | (\$0/acre fee) |
| B. Category B/ Pay Zone A | (\$750/acre fee) |
| C. Category C/ Pay Zone B (Agriculture) | (\$1,500/acre fee) |
| D. Category D/Pay Zone B (Natural) | (\$1,500/acre fee) |
| E. Category E/Pay Zone C (Vernal Pools) | (\$30,000/acre fee wetted; \$5,000/acre fee upland
- \$8,000/acre fee averaged) |

Category A/ No-Pay Zone indicates parcels where Conversions of Open Space already have occurred (Urban Lands as described in Section 2.2.1.4) or where new Conversions of Open Spaces would not require compensation because

The subject parcel received a project approval prior to the Effective Date of the SJMSCP. Approved, for the purposes of this section means completion of the environmental review process (CEQA review) and approval of an entitlement through a public hearing process or issuance of an entitlement by a local planning agency if a public hearing is not required. Conditions of prior approval or statements of no impact shall be attached to these projects in accordance with the conditions of approval. Annexations, regardless of the date of approval, are not automatically exempt from the SJMSCP unless individual Project Proponents opt not to participate under the SJMSCP (see Section 8.4). Projects approved on or after the Effective Date of the SJMSCP are subject to the Plan unless individual Project Proponents opt not to participate under the SJMSCP (see Section 8.4).

There is no fee for SJMSCP Permitted Activities located within the No Pay Zone on the *SJMSCP Compensation Zone Maps* unless otherwise specified in pre-existing conditions of project approval.

Category B/ Pay Zone A includes parcels containing habitat types classified as Multi-Purpose Open Space as described in Section 2.2.1.3, which are not otherwise exempt. The fee for undertaking SJMSCP Permitted Activities on these parcels is currently \$750 per acre.

Category C/ Pay Zone B includes parcels containing habitat types classified as Agricultural Habitat Lands pursuant to Section 2.2.1.2, which are not otherwise exempt. The fee for undertaking SJMSCP Permitted Activities on these parcels is currently \$1,500 per acre.

Category D/Pay Zone B includes parcels containing habitat types classified as Natural Lands pursuant to Section 2.2.1.1, excluding those Natural Lands classified as Vernal Pool Grasslands (G3). The current fee within Pay Zone B is \$1,500/acre.

Category E/Pay Zone C includes parcels containing Natural Lands classified as Vernal Pool Grasslands (G3) as indicated on the *SJMSCP Vegetation Maps* and as verified by a site inspection conducted by the JPA, which are not otherwise exempt. The fee for undertaking SJMSCP Permitted Activities on these parcels is currently \$30,000 per acre for wetted surface area and \$5,000 for upland grasslands (an average cost per acre of \$8,000, assuming 12% of the parcel is wetted surface area).

OTHER. In cases where a separate written agreement between the Project Proponent and the Permitting Agencies has been reached to address plants, fish and wildlife and habitat issues for a proposed project, the provisions of the agreement shall determine the appropriate fees and compensation. Wherever possible, these agreements shall be reflected on the *SJMSCP Compensation Zone Maps*. Agreements which reflect partial mitigation only (e.g., for cumulative impacts, but not for site specific impacts) are not included in this category.

The *SJMSCP Compensation Zone Maps* are hereby incorporated by reference. Prior to issuance of the SJMSCP Permits, the *SJMSCP Compensation Zone Maps* and *SJMSCP Planned Land Use Map* shall be reviewed and approved by each local jurisdiction requesting coverage under the SJMSCP Permits and the Permitting Agencies.

Exhibit 4

Glossary

Acquisition, Acquired

The term “acquisition” or “acquired” means the acquisition of conservation or property rights to a particular land parcel for plant, fish, and/or wildlife Preserve purposes pursuant to the SJMSCP. Acquisition of Preserve lands under the SJMSCP will normally be through purchase of a conservation easement, through outright purchase of fee title with appropriate protective covenants, through acceptance of land dedications or through purchase or creation of mitigation banking credits.

Agricultural processing

The Agricultural Processing use type refers to the processing of foods and beverages from agricultural commodities. The following are the categories of the Agricultural Processing use types:

- (a) Preparation Services. Establishments primarily engaged in performing limited processing on crops, subsequent to their harvest, with the intent of preparing them for market or further processing. Typical uses include nut hulling and shelling, bean cleaning, corn shelling and sorting, and grading and packing of fruits and vegetables.
- (b) Food manufacturing. Establishments engaged in manufacturing or processing foods and beverages for consumption. Typical uses include canning of fruits and vegetables, slaughter houses, creameries, and manufacture of prepared meat products.

When required, interpretations based on this definition shall be made by the San Joaquin County Community Development Director.

Animal feeding and Sales

The Animal Feeding and Sales use type refers to temporary holding of livestock on a fee or contract basis in preparation for slaughter, market, shipping or sales. Typical uses include livestock auction yards, stockyards, animal sales yards, and feedlots for cattle, hogs, or sheep.

Applicants

The terms "Applicant" and "Applicants" means the Permittees or Permit Holders.

Categorically Exempt

"Categorically Exempt" means a project which has been determined to have no significant effect on the environment pursuant to Section 15300 et. seq. of California's State CEQA Guidelines. Pursuant to Section 15300.2 of California's State CEQA Guidelines, SJMSCP Permitted Activities which will result in the Take of an SJMSCP Covered Species are not categorically exempt.

CESA

The California Endangered Species Act (California Fish and Game Code Sections 2050 et seq.) and

regulations promulgated pursuant to that Act.

Cities

The term “cities” means the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy, all of which are incorporated cities in San Joaquin County and are expected to be Plan Participants.

Conservation Plan

The term “Conservation Plan” means the SJMSCP and is the same as “Habitat Conservation Plan”.

Conversion, Convert, Converting, Converted

The term Conversion, Convert, Converting or Converted as used in the SJMSCP, means to change land from an existing Open Space use (e.g., Agricultural Habitat Lands, Natural Lands) to either a non-Open Space use (e.g., urban development) or to an Open Space use with a lower habitat value (e.g., changing vernal pool grasslands to orchards and vineyards or extending golf courses beneath the driplines of trees). **Compensation requirements described in the SJMSCP apply only to SJMSCP Permitted Activities carried out by Plan Participants or Project Proponents. Agricultural activities are not covered by the SJMSCP (except that Conversion of wetlands as a result of agricultural activities requiring a Section 404 permit pursuant to the Federal Clean Water Act and/or subject to the ESA may be covered pursuant to the SJMSCP). Therefore, change of agricultural use of Agricultural Habitat Lands, Natural Lands, Multi-Purpose Open Space Lands or any lands by agricultural activities, except as noted above, triggers no actions or requirements related to the SJMSCP. Changes of agricultural uses of Agricultural Habitat Lands, Natural Lands, Multi-Purpose Open Space Lands or any lands by agricultural activities remain subject to the same legal requirements, including the need to comply with the Federal Endangered Species Act and/or CESA even when permits are not required pursuant to the Federal Clean Water Act, as were in effect before adoption of the SJMSCP and individuals are encouraged to consult with local, state and federal agencies to determine applicable regulations.**

County

The term “County” means San Joaquin County, California, which is expected to be a Plan Participant.

Covered Species

The term “Covered Species” means the plant, fish and wildlife species listed in Table 2.2.2 of the SJMSCP which receive varying levels of coverage pursuant to the ESA, CESA and/or CEQA. Species receiving ESA Section 10(a)(1)(B) or CESA 2081 coverage, as indicated in Table 2.2.2, which are currently listed under ESA and CESA are covered immediately upon issuance of the permits. Covered Species currently unlisted under ESA and CESA, but named on the SJMSCP Permits and receiving Section 10(a)(1)(B) or CESA 2081 coverage, as indicated in Table 2.2.2, will be covered by the permits effective upon listing if listing should occur. Plants will be covered if Permitted Activities result in Take of such species under state or federal law for those plants designated in Table 2.2.2 to receive Section 10(a)(1)(B) or CESA 2081 coverage.

Disturbing Activities

See “Site Disturbing Activities”.

Effective Date

The date that the Service, the Department and any three Local Governments complete execution of the Implementation Agreement thereby making the SJMSCP Permits effective as to all executing Parties.

ESA

The Federal Endangered Species Act (16 U.S. C. Subsections 1531-1544) and regulations promulgated pursuant to that Act.

Evaporation Ponds

Evaporation ponds include ponds constructed for sewage treatment and agricultural wastewater evaporation ponds. Evaporation ponds exclude catch basins used for stormwater runoff management.

Farm Labor Camp

The Farm Labor Camp use type refers to any living unit occupied by seven (7) or more farm workers and their families occurring exclusively in association with agricultural labor. Typical uses include labor camps and labor supply camps.

Feasible

For the purposes of the SJMSCP, the term "feasible" has the same meaning as prescribed in Public Resources Code Section 21061.1. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

Funding Shortfall

For the purposes of the SJMSCP, and as described in detail in Section 7.5.2.4, a funding shortfall is a deficit of 15% or more of the money needed to acquire the total Preserve acres required pursuant to Section 4.1 of the SJMSCP for a period of three consecutive years, or a deficit of 30% for a period of one year, due to a lack of funding, shall be considered a funding shortfall. The elimination of a Preserve acreage deficit at any time restarts the time period necessary to establish a funding shortfall.

Ground Disturbing Activities

See Site Disturbing Activities.

Habitat Conservation Plan

The term "Habitat Conservation Plan" means the SJMSCP.

Incidental Take

The term "Incidental Take," under the Federal Endangered Species Act, means Take of an SJMSCP Covered Species that is incidental to, and not the primary purpose of, the carrying out of an otherwise lawful activity.

Incidental Take Minimization Measures

The methods adopted by the SJMSCP, and implemented by those carrying out SJMSCP Permitted Activities, to reduce the levels of Incidental Take of SJMSCP Covered Species before and during the SJMSCP Permitted Activities are referred to as Incidental Take Minimization Measures.

Joint Powers Authority (JPA)

For the purposes of the SJMSCP, the term "Joint Powers Authority" includes the Joint Powers Authority and/or its designee or designees. The SJMSCP will be administered by a Joint Powers Authority (JPA) created pursuant to the Joint Exercise of Powers Act, California Government Code Sections 6500 et seq. The JPA shall have adequate authority to carry out the Plan on behalf of the Plan Participants. The JPA shall consist of one representative from each of the cities that adopts the Plan and two representatives from the San Joaquin County Board of Supervisors, if the County adopts the Plan. Representatives on the JPA shall be elected officials from the participating local jurisdictions. The JPA shall create and consult with advisory groups as needed and appropriate.

The JPA will be assisted by a qualified land management organization (see Land Manager) and administrative staff, as needed to implement the SJMSCP. The JPA includes a technical advisory committee as described in Section 8.1.4 and a citizen's advisory committee or committees to be formed as needed and appropriate.

Jurisdiction/Jurisdictional Boundaries

The SJMSCP applies to SJMSCP Permitted Activities (see above) located within the boundaries of San Joaquin County unless more precisely specified herein. For the cities, jurisdictional boundaries shall be equal to the incorporated city limits of the city. For the County, jurisdictional boundaries shall be equal to those lands located within San Joaquin County, which are located outside of incorporated city limits. For non-city and non-County Plan Participant agencies with adopted boundaries, jurisdictional boundaries shall be equivalent to the Plan Participant agency's designated and adopted boundaries. For Plan Participant agencies without adopted boundaries (e.g., Caltrans, San Joaquin Area Flood Control Agency), jurisdictional boundaries shall include all land located within San Joaquin County upon which SJMSCP Permitted Activities, consistent with the adopted goals of the Plan Participant agency, shall occur. For the East Bay Municipal Utility District, the Stockton East Water District and the South San Joaquin Irrigation District, jurisdictional boundaries are as established in Appendix X.

Jurisdictional boundaries may be altered over the life of the Plan through annexations by the cities and boundary adjustments by Plan Participant agencies pursuant to the SJMSCP Permitted Activities [Anticipated Projects Category Section 8.2.1(10)].

Maintenance Activities

SJMSCP Permitted Activities include, but are not limited to, maintenance activities for existing and planned buildings, roads, fences, pipelines and aqueducts including valves and pipe supports, bridges, ditches, levees, parks, wasteways, hatcheries and similar facilities. SJMSCP Covered Maintenance Activities will normally be undertaken on facilities operated and/or maintained by: Caltrans, East Bay Municipal Utility District, Stockton East Water District, San Joaquin Area Flood Control Agency, South San Joaquin Irrigation District, Schools, city and County public works departments and similar quasi-public agencies. Maintenance activities will normally occur within rights-of-way, easements or lands held by the identified agencies.

Maintenance activities include, but are not limited to: Repair and replacement of fencing, gates and cattle

guards; grading (i.e., re-grading of existing roads and other existing facilities to re-establish surfaces disturbed by erosion and similar degradation); resurfacing including graveling and re-paving; ditch cleaning; culvert replacement; mowing; discing (e.g., to re-establish fire breaks along roadsides); burning; spraying (water for dust control); mechanical weeding (including weed control for fire suppression and flood control); excavating for inspection, repair and/or replacement; mechanical brush clearing (including brush clearing from wasteways); patrolling and exercising valves; scraping; maintenance of drainages along rights of ways; maintenance of river crossings for utilities such as aqueducts; reconstruction or replacement of existing facilities with negligible or no expansion; and maintenance of landscaping. Maintenance activities typically include spraying. For the purposes of the SJMSCP, pesticide use, including spraying, is not a covered activity in the Permit Area.

See Section 5.9.1.2 for a description of reporting requirements for Maintenance Activities.

Open Space

Lands mapped on the *SJMSCP Vegetation Maps* containing vegetation types classified pursuant to this Chapter as Natural Lands, Agricultural Habitat Lands, or Multi-Purpose Open Space Lands.

Permit/Permits

The terms "Permit" and "Permits" shall mean all of the following:

- A. A CESA Section 2081(b) Incidental Take Permit to authorize Incidental Take of state-listed species including authorization of Take of state-listed species, and other unlisted species should they become listed, resulting from land use changes and other disturbances associated with SJMSCP Covered Activities, mitigation activities, management, monitoring and operation of the SJMSCP Preserve system including Neighboring Land Protections and for scientific purposes (e.g., trapping, handling, and marking of SJMSCP Covered Species). This Section 2081(b) Permit also will authorize Incidental Take of vernal pool and aquatic species which are covered by the SJMSCP for SJMSCP Covered Activities that do not require a permit under Section 404 of the Federal Clean Water Act, Section 10 of the Rivers and Harbors Act or other federal regulations that would trigger CESA. See also Section 5.6.1 for additional information related to the relationship of the SJMSCP and the SJMSCP's planned future regional general permit, or equivalent, expected to be secured from the U.S. Army Corps of Engineers pursuant to Section 404 of the Federal Clean Water Act;
- B. An ESA Section 10 (a)(1)(B) Permit to authorize Incidental Take of federally-listed species, and other unlisted species should they become listed, including authorization of Take of federally-listed species resulting from impacts of land use changes and other disturbances associated with SJMSCP Covered Activities, mitigation activities, management, monitoring and operation of the SJMSCP Preserve system including Neighboring Land Protections and for scientific purposes (e.g., trapping, handling, and marking of SJMSCP Covered Species). This Section 10(a)(1)(B) Permit also will authorize Incidental Take of vernal pool and aquatic species which are covered by the SJMSCP for SJMSCP Covered Activities that do not require a permit under Section 404 of the Federal Clean Water Act, Section 10 of the Rivers and Harbors Act or other federal regulations that would trigger an ESA consultation. See also Section 5.6.1 for additional information related to the relationship of the SJMSCP and the SJMSCP's planned future regional general permit, or equivalent, expected to be secured from the U.S. Army Corps of Engineers pursuant to Section 404 of the Federal Clean Water Act;

- C. The ESA Section 10(a)(1)(B) Permit (see B, above) will allow for Take, as defined by the MBTA and pursuant to 50 C.F.R. 21.27, of those birds covered by the SJMSCP that are protected by the MBTA and federally-listed under the ESA, except for bald and golden eagles, pursuant to the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. Sections 703-712); and
- D. Coverage pursuant to the California Environmental Quality Act for impacts to SJMSCP Covered Species occurring as a result of SJMSCP Covered Activities.

The SJMSCP Implementation Agreement establishes the necessary requirements to commence Incidental Take for local city and County jurisdictions, and special districts, and third parties. Implementing ordinances and/or resolutions adopted in conjunction with the requirements of the Implementation Agreement by local jurisdictions and special districts will formalize their acceptance of the SJMSCP as adequate compensation for and minimization of impacts to plants, fish and wildlife, and as partial mitigation for non-wildlife related impacts to recreation, agricultural lands, scenic values, and other beneficial Open Space uses. Further, these ordinances and/or resolutions adopted by local jurisdictions and special districts shall include findings that an agreement for payment of environmental review fees to the California Department of Fish and Game pursuant to Assembly Bill 3158 is not required for projects undertaken in compliance with the SJMSCP.

After the requirements of the Implementation Agreement relative to activation of the SJMSCP Permits are fulfilled as necessary to authorize the commencement of Incidental Take pursuant to the SJMSCP, the SJMSCP Joint Powers Authority intends to obtain the following permits and/or authorizations:

- A. A programmatic streambed alteration agreement (either as Plan amendment or as a separate, but supplemental, permit to the SJMSCP) with the California Department of Fish and Game pursuant to Section 1600 et seq. of the California Fish and Game Code to provide a blanket agreement for SJMSCP Permitted Activities affecting streams. The California Department of Fish and Game indicates that the mitigation contained within the SJMSCP can be used as a basis for establishing mitigation for plant, fish and wildlife species and their habitats pursuant to the proposed programmatic streambed alteration agreement (see Appendix V);
- B. An ESA Section 10(a)(1)(B) Permit to authorize Incidental Take of anadromous fish species including the Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), Fall-run Chinook salmon (*Oncorhynchus tshawytscha*), Spring-run Chinook salmon (*Oncorhynchus tshawytscha*) and steelhead trout (*Oncorhynchus mykiss gairdneri*) from the National Marine Fisheries Services (NMFS);
- C. A program to encourage individuals to undertake activities which are not otherwise subject to local, state or federal plant, fish and wildlife regulations, to provide plant, fish and wildlife enhancements on their properties without fear of prosecution or limitations on pre-existing legal activities should those plant, fish and wildlife enhancements attract SJMSCP Covered Species to their property. This program is outlined in Section 5.4. Adoption of this program will be pursued by the JPA after state and federal agencies have adopted guidelines and/or rules in conjunction with:
 - 1. California's newly adopted legislation for addressing Incidental Take associated with routine and ongoing activities (i.e., Section 2086 et seq. of the California Fish and Game Code); and
 - 2. the federal safe harbor program (note: the Final Rule for this program has

been published).

- D. A general permit(s) pursuant to Section 404(e) of the Federal Clean Water Act [33 CFR 322.2(f) and 323.2(h)], or an alternative equivalent authorization(s), issued by the U.S. Army Corps of Engineers in consultation with the U.S. Fish and Wildlife Service covering Waters of the United States for SJMSCP Permitted Activities affecting up to 707 acres of vernal pool wetted surface area and equivalent to 5,894 acres of vernal pool grasslands, 1,233 acres of Riparian habitats and 4,790 acres of Water Features;
- E. A water quality certification or waiver from the California State Water Resources Control Board or Central Valley Regional Water Quality Control Board pursuant to Section 401 of the Federal Clean Water Act after issuance of the Section 404(e) general permit(s), or equivalent, for the activities covered in the Section 404(e) general permit(s), or equivalent, to be issued after initial adoption of the SJMSCP; and
- F. Within three years of the Effective Date of the SJMSCP, the JPA shall secure a Federal Clean Water Act Section 404 regional general permit, or equivalent, from the U.S. Army Corps of Engineers or the JPA shall adopt a strategy to ensure that impacts to wetlands resulting from SJMSCP Covered Activities shall include compensation in the form of large, interconnected Preserves, consistent with the requirements of the SJMSCP rather than resulting in small, scattered Preserves as now occurs. Approval of an alternative strategy in lieu of a Section 404 Permit, or its equivalent from the U.S. Army Corps of Engineers, shall require review of the TAC, with the concurrence of the Permitting Agencies.

Once issued, these authorizations shall become SJMSCP Permits.

Permit Area

The term "Permit Area" means all of San Joaquin County excepting all federal lands and areas encompassing those projects not covered by the SJMSCP as listed in SJMSCP Section 8.2.2.2.

Permit Holder or Permit Holders

The term "Permit Holder" or "Permit Holders" has the same meaning as Permittee or Permittees.

Permitted Activities

"Permitted Activities" means activities carried out by Plan Participants or Third Parties in the Plan Area, as described in Section 8.2.1 of the HCP, which are covered by the HCP and for which Incidental Take is authorized under the Section (10)(a) Permits and Section 2081 Permits.

Permittee or Permittees

The term "Permittee" or "Permittees" means:

the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy; San Joaquin County [on behalf of San Joaquin County and the San Joaquin County Superintendent of Schools (for new schools and school expansions)]; Stockton East Water District; East Bay Municipal Utility District; California Department of Transportation; San Joaquin Council of Governments; San Joaquin Area Flood Control Agency; and the South San Joaquin Irrigation District. See also Plan Participants and Applicant.

Permitting Agencies

For the purposes of the SJMSCP, the term "Permitting Agencies" means the United States Fish and Wildlife Service and the California Department of Fish and Game NOTE: The U.S. Army Corps of Engineers Permitting Agency authority in the SJMSCP process will be maintained by the USACE through implementation of a Section 404 General Permit, rather than through a signature on the Implementation Agreement and shall become a Permitting Agency after issuance of such a permit, or its equivalent.

Plan Area

See "Permit Area."

Plan Participants

Plan Participants are the same as "Permittees."

Preserve Category

The term "Preserve Category" has the same meaning as "Preserve Type."

Preserve Lands

The term "Preserve Lands" means land acquired and/or managed by the JPA and either held by the JPA or transferred, via recordation of a conservation easement or transfer of fee title, including protective covenants, in favor of CDFG or an approved third party, for management of habitat in perpetuity for the SJMSCP Covered Species. Also a parcel or parcels of land protected from future urban development or other disturbance and managed as a unit for the conservation and protection of SJMSCP Covered Species.

Preserve Types

There are 12 Preserve Types established in the SJMSCP. A "Preserve Types" are descriptions of the various kinds of Preserves that will be established by the SJMSCP. Preserve Types represent assemblages of individual vegetation types into habitats (i.e., each Preserve Type represents a habitat type).

The 12 Preserve Types are:

- Primary Zone of the Delta - Water's Edge Preserves (Large and Small)*
- Primary Zone of the Delta - Flooded Field Preserves*
- Southwest Zone - Grassland Preserves*
- Southwest Zone - Riparian Preserves*
- Southwest Zone - Blue Oak Conifer Preserves*
- Southwest Zone - Diablan Sage Scrub Preserves*
- Vernal Pool Zone - Vernal Pool Grassland Preserves*
- Central Zone - Row and Field Crop/Riparian Preserves*
- Central Zone - Wetlands Preserves*
- Central Zone - Oak Woodlands Preserves*
- Submerged Aquatic Vegetation Preserves (Central Zone and Primary Zone of the Delta)*

Note: Within these Preserves there may be "Specialty Preserves" established for SJMSCP Covered Plant Species. Specialty Preserves normally will be less than 20 acres and include a population of these species.

Project Proponent

"Project Proponent" means a private individual or public agency, including Plan Participants, proposing to conduct Permitted Activities within the Plan Area.

Resales of Land/Revolving Fund

One SJMSCP funding method is the re-sale of land/revolving fund. For purposes of the SJMSCP, these two terms have the same meaning. Under this approach, land is purchased in fee title by the JPA, a conservation easement is placed on the land, then the land is re-sold. Profits from the land sales are used to purchase additional lands. This is similar to the method used by many major land trusts.

Routine and Ongoing Agricultural Activities

The following definition is intended for use only for the purposes of SJMSCP Section 5.3.3.4, Neighboring Land Protections and is not intended to define routine and ongoing agricultural activities for any other purpose.

"Routine and ongoing agricultural activities" are all activities undertaken on a farm or ranch for the purpose of producing or marketing any plant or animal product for commercial purposes, unless otherwise excepted below and provided the activities are consistent with the economics of agricultural operations. Routine and ongoing agricultural activities do not include: Conversion of agricultural land to a nonagricultural use; timber harvesting activities governed by the State Board of Forestry; Conversion of grazing lands to orchards or vineyards (or other Conversion which triggers Section 404 of the Federal Clean Water Act); SJMSCP Permitted Activities listed in Section 8.2.1; Projects not covered by the SJMSCP as listed in Section 8.2.2.1; or specific projects not covered by the SJMSCP as listed in Section 8.2.2.1; installation of evaporation ponds; Conversions to wholesale nurseries, agricultural processing, farm labor camps, small animal raising, animal feeding and sales, and trucking facilities. After securing required entitlements, completing mitigation to offset potential impacts to habitat and/or species and after completion of project construction, and excepting expansions, the following activities shall be considered routine and ongoing agricultural activities for the purposes of receiving neighboring land protections pursuant to the provisions of Section 5.3.3.4: wholesale nurseries, agricultural processing, farm labor camps, small animal raising, animal feeding and sales, and trucking facilities.

Pursuant to Section 5.3.3.4(A)(2)-(G&H), special provisions exist for the extension of neighboring land protections to orchards and vineyards, wholesale nurseries, agricultural processing, farm labor camps, small animal raising, animal feeding and sales, and trucking facilities.

Section 2081(b) Permit

"Section 2081(b)Permit" means the Incidental Take authorization issued in accordance with the SJMSCP by CDFG under CESA pursuant to California Fish and Game Code Section 2081 et seq. to permit the Take of a species listed under CESA as threatened, rare or endangered, or any unlisted SJMSCP Covered Species should such a species become listed under CESA during the life of the Plan pursuant to the procedures established in Sections 11 and 12.3 of the Implementation Agreement.

Section 10(a)(1)(B) Permit

The permit issued in accordance with the SJMSCP by the USFWS to the Permittees under Section 10(a)(1)(B) of the Federal Endangered Species Act [16 U.S.C. Section 1539(1)(1)(B)] to allow the Incidental Take of Covered Species. See also, "Permit/Permits."

Site Disturbing Activities

Site disturbing activities include, but are not limited to, site grading, land clearing (cutting down trees or removing other vegetation), deep-ripping wetland soils, or filling wetlands for the purposes of undertaking a private or public construction project or other SJMSCP Permitted Activity. These activities normally will occur after the issuance of permits from local jurisdictions and after public hearings are completed, when applicable. Site disturbing activities normally alter the vegetation cover of a parcel to the extent that it is likely to result in the relocation of or harm to a plant, fish or wildlife species located on the parcel or will result in altering the hydrology of a wetland. Site disturbing activities exclude minor activities such as conducting land surveys to establish parcel and other boundaries (normally in anticipation of construction proposals), conducting geotechnical or soil surveys (generally limited to taking core samples 2" or less in diameter as long as such sampling does not alter the hydrology of any wetland--e.g., excludes punching holes in the water-retaining substrate of vernal pools) and similar minor activities as long as such minor activities will not alter the continuing occupation of a site by a plant, fish or wildlife species.

SJMSCP

"SJMSCP" means the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, and has the same meaning as "Plan," "Conservation Plan" and "Habitat Conservation Plan."

SJMSCP Permitted Activities

The term "SJMSCP Permitted Activities" has the same meaning as "Permitted Activities."

SJMSCP Permit or Permits

The term "SJMSCP Permit" or "SJMSCP Permits" has the same meaning as "permit" or "Permits."

SJMSCP Covered Species

The term "SJMSCP Covered Species" has the same meaning as "Covered Species."

Small Animal Raising

Raising small animals for breeding purposes or for meat, fish, eggs or production. Typical uses include chicken farms, turkey farms, duck farms, pigeon farms, fish and frog farms, fish hatcheries, and rabbit farms.

Take

The term "Take," is defined in the California Endangered Species Act, the Federal Endangered Species Act, the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

The ESA defines "Take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harass" is further defined by federal regulation implementing the ESA to include "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering" (50 CFR 17.3). "Harm," as defined by regulation means, "an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering"(50 CFR 17.3). Take defined according to the Federal Endangered Species Act and its implementing regulations is broader than, and includes all forms of Take defined in the

California Endangered Species Act and other federal statutes. The Term Take as used in the SJMSCP is used in its broadest sense, that is, as defined in the Federal Endangered Species Act.

Third Parties

“Third Parties” means those Project Proponents who receive Incidental Take authority under the provisions of the HCP and the Implementation Agreement, as described in Section 9 of the Implementation Agreement.

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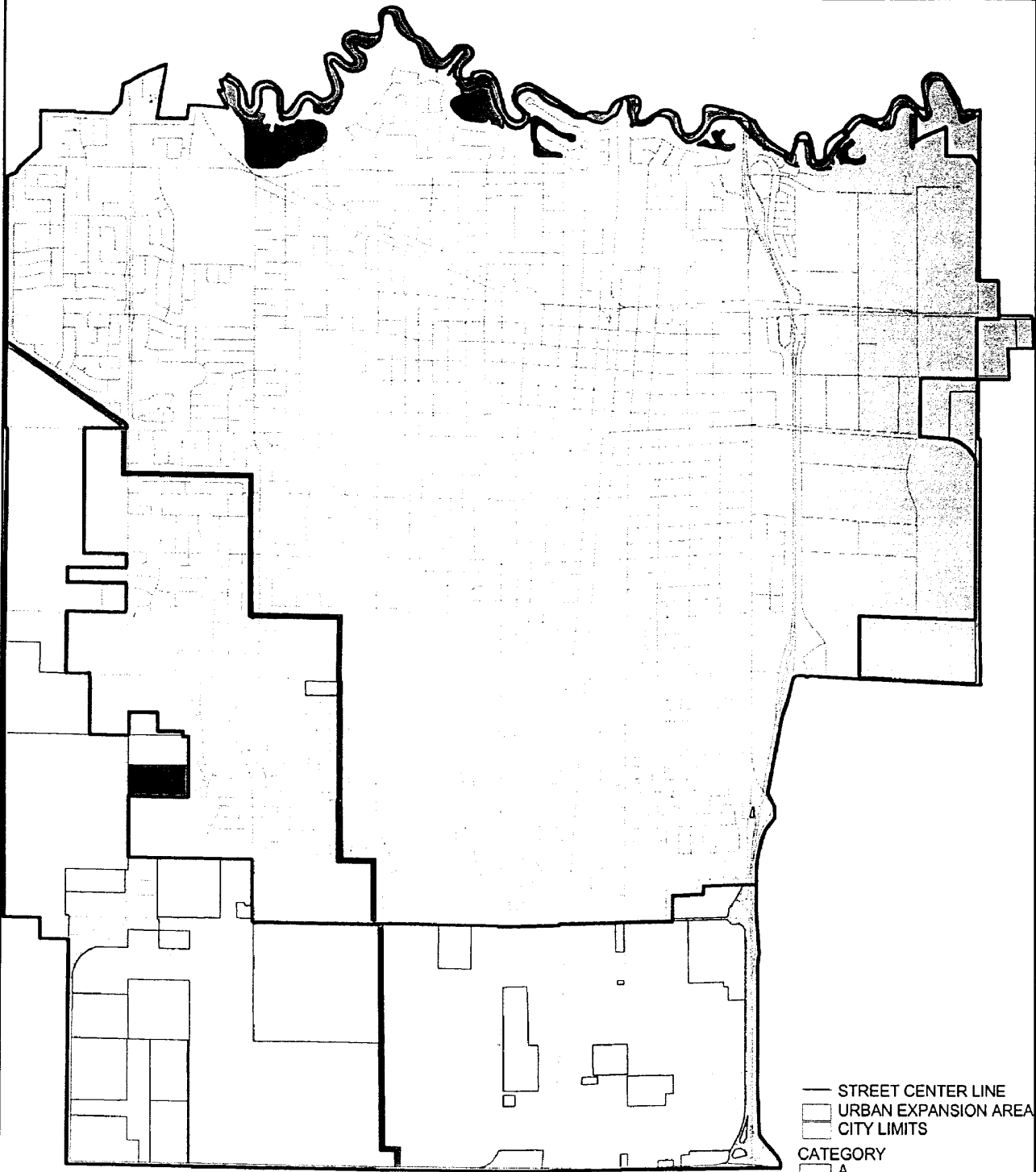
Exhibit B

FULL BUILDOUT OF GENERAL PLANS (Acres)	
CONVERSION COMPENSATION	ACRES TRIGGERING PRESERVE
Natural Lands to Be Converted including Submerged Aquatic Habitat	14,202
Agricultural Habitat Lands to Be Converted (non- orchard and non- vineyard)	57,635
SJMSCP Covered Species Habitat Conversion Subtotal	71,837
MULTI-PURPOSE OPEN SPACE CONVERSIONS	
Multi-Purpose Open Space Lands to Be Converted	37,465
Total Lands To Be Converted after 2001	109,302
NEIGHBORING LAND PROTECTION PRESERVES	
Preserve Lands required to compensate for potential impacts to SJMSCP Covered Species which wander off SJMSCP Preserves and onto lands neighboring SJMSCP Preserves	600
Preserve Lands Required to Compensate for Impacts to SJMSCP Covered Species	<div>14,202 X 3</div> <div>57,635 X 1</div> <div>600 x 1</div> <div>42,606</div> <div>57,635</div> <div>600</div> <div>100,841</div>

Exhibit C

Category A/No Pay Zone	\$0/acre
Category B/Pay Zone A (Multi-Purpose)	\$845/acre
Category C/Pay Zone B (Agriculture)	\$1,690/acre
Category D/Pay Zone C (Natural)	\$1,690/acre
Category E/Pay Zone C (Vernal Pools)	\$33,802/acre (wetted) \$5,634/acre (upland)

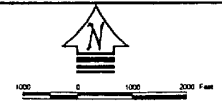
The fees established above are revised fee amounts as per the California Construction Cost Index in 2002 dollars.



CITY OF LODI

San Joaquin County Geographic Information Systems
 1810 East Hazelton Avenue, Stockton, CA 95205

The information on this map is based on the most current information available to San Joaquin County Geographic Information Systems. The County of San Joaquin does not warrant the accuracy, completeness, or suitability for any particular purpose. The information on this map is not intended to replace engineering, surveying or other professional services.



November 14, 2001 jk